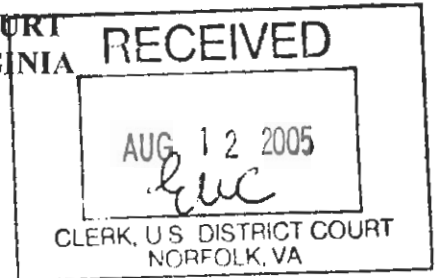


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



Inline Connection Corporation,

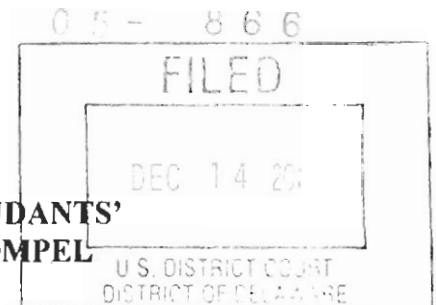
Plaintiff,

v.

Verizon Internet Services, Inc., et al.,

Defendants.

Civil Action No. 2:05CV205



**OPERATING TELEPHONE COMPANY DEFENDANTS'
OPPOSITION TO INLINE'S MOTION TO COMPEL
PRODUCTION OF DOCUMENTS**

Certain Operating Telephone Company Defendants¹ hereby oppose the "Motion To Compel Defendant Operating Telephone Companies' Production of Documents" filed by Plaintiff Inline Connection Corporation ("Inline") on August 1, 2005.

Further consideration of this motion to compel should be deferred pending the Court's ruling on Defendants' motion to transfer this action back to the Delaware federal district court – *i.e.*, the forum in which Inline originally sued the Verizon defendants' parent corporation, Verizon Communications, Inc., in June of 2002, and where Inline has been litigating the very same patents and claims for more than three years in co-pending lawsuits against AOL and Earthlink. If the Court grants transfer to Delaware, Inline can join operating telephone company

¹ Inline's August 1, 2005 Motion to Compel is directed against the following non-resident operating telephone company defendants: Defendants Verizon California Inc., Verizon Florida Inc., Verizon Hawaii Inc. (now Hawaiian Telecom Inc.), Verizon Delaware Inc., Verizon Maryland Inc., Verizon New Jersey Inc., Verizon New York Inc., Verizon Pennsylvania Inc., Verizon Washington, D.C. Inc., Verizon West Virginia Inc., Verizon New England Inc., Verizon North Inc., Verizon Northwest Inc., Verizon West Coast Inc., and GTE Southwest Inc. *d/b/a* Verizon Mid-States (hereinafter the "OTC movants").

defendants Verizon Delaware Inc. and GTE Southwest Inc. *d/b/a* Verizon Southwest, both of which are incorporated in Delaware, as parties-defendant. The Delaware court can then address any remaining issues regarding personal jurisdiction over the other non-resident operating telephone company defendants in light of its extensive knowledge, gained from three years of litigation in the co-pending AOL/Earthlink lawsuits, of the Inline patents, Inline's judicial admissions and the accused splitterless ADSL services.

Alternatively, as discussed below, Inline's motion to compel should be denied on grounds that:

(1) The motion to compel additional jurisdictional discovery after the personal jurisdiction motion has been fully briefed on the merits is untimely and will disrupt orderly disposition of the pending threshold motions.

(2) Inline's document requests do not address the uncontroverted jurisdictional facts establishing that each OTC movant provides purely local telecommunications services solely within its defined geographic territory (other than Virginia) pursuant to FCC and state regulation.

(3) In addition to being untimely and irrelevant to the controlling jurisdictional facts, the individual requests are overbroad and unduly burdensome, and Inline declined to reasonably narrow them during the parties' meet and confer discussions.

I. Factual Background

A. Co-Pending Delaware Actions

In April and June of 2002, Inline filed three lawsuits in the Delaware federal district court against AOL, Earthlink and Verizon Communications Inc. ("VCI") (the ultimate parent of all of the Defendants in the present action). Inline dismissed its claims against VCI a few months later.

The lawsuits against AOL and Earthlink, however, continued and are still being litigated in the Delaware Court before Magistrate Judge Thyng.

The AOL/Earthlink Actions in Delaware involve the same patents and claims asserted against the Verizon defendants in this case. Both AOL and Earthlink are internet service providers (“ISPs”). Inline alleges that the so-called “splitterless” ADSL service provided by these ISPs to their respective subscribers infringe the Inline patents. Although AOL and Earthlink obtained tariffed local telecommunications services for their customers from operating telephone companies throughout the nation, at no time during more than three years of litigation in the Delaware Court has Inline ever attempted to add any operating telephone company as a defendant in those lawsuits.

B. Operating Telephone Companies

Operating telephone companies are the local telephone companies that provide telecommunications services to customers within their respective geographic territories. Operating telephone companies are regulated by the Federal Communications Commission (“FCC”) and state regulatory commissions. Operating telephone companies provide services in accordance with rates, terms and conditions set forth in tariffs filed with the FCC and the state agencies. Thus, each operating telephone company provides DSL-related telecommunications service solely pursuant to these tariffs, and only to customers located in the specific geographic territory in which it is licensed to offer service.

Inline’s present motion to compel is directed against the 16 non-resident OTC movants that have moved to dismiss for lack of personal jurisdiction. The controlling jurisdictional facts concerning these defendants are fully supported by declarations submitted with their May 31, 2005 motion to dismiss. These declarations establish the following uncontroverted facts:

- None of the OTC movants is authorized to service customers situated in Virginia and none provides telecommunication services in Virginia.
- None of the OTC movants owns or operates any network switches or landlines in Virginia.
- None of the OTC movants provides any DSL-related services in Virginia.
- None of the OTC movants directs its activities toward residents of Virginia.
- Each OTC movant acts as a local voice and data signal transfer point for Internet Service Providers (ISPs) in its respective licensed geographic territories (which do not include Virginia) in accordance with published FCC tariffs.
- By law, each OTC movant operates solely in a defined geographic service area (which does not include Virginia) governed by the FCC and applicable state regulatory commissions.

Inline does not and cannot controvert any of these jurisdictional facts set forth in the OTC movants' supporting declarations.

C. The OTC Movants Motion To Dismiss For Lack of Personal Jurisdiction

On May 31, 2005, the OTC movants timely filed their motion to dismiss for lack of personal jurisdiction. The motion was properly supported by declarations establishing the controlling jurisdictional facts.

Approximately a week after the motion was filed, Inline's counsel wrote a letter dated June 6 containing informal requests for documents. Verizon's counsel promptly responded the day the letter was received (*i.e.*, June 7), noting that most of the requests were overbroad, unreasonably burdensome and/or irrelevant to the personal jurisdiction issue and inviting Inline's counsel to call to discuss the requests and try to reach an accommodation. Inline's counsel did not call back to discuss the requests until June 13 and, at that time, was unwilling to narrow the

requests or to identify the specific types of documents Inline was seeking that might be relevant to the jurisdictional facts.²

That very same day (*i.e.*, June 13), Inline proceeded to file its opposition to the personal jurisdiction motion on the merits. Inline's opposition attached approximately one inch of documentary exhibits and referenced a contemporaneously filed "Declaration of John C. Donovan" that included an additional three inches of documentary exhibits (*i.e.*, more than 1,000 pages of material in total). Many of these documents were obtained by Inline in November of 2004, five months before the present lawsuit was filed.

The OTC movants' filed their merits reply memorandum on June 16, 2005. At that time, the personal jurisdiction motion was fully briefed and ready for disposition. The parties have been advised that the motion will be likely set for hearing after August 15, 2005 in connection with Defendants' pending motion to transfer this case back to the original Delaware forum.

II. Inline's Second Set Of Document Requests Are Untimely And Will Disrupt Orderly Disposition Of The Pending Threshold Motions.

Defendants' July 11, 2005 Objections to Inline's Second Request for Production of Documents includes the following express objection:

Defendants object to these requests for production on grounds that they are untimely and plaintiff Inline Connection Corporation ("Inline") has waived additional personal jurisdiction discovery. Certain Operating Telephone Company Defendants (the "OTC Movants") filed their motion to dismiss for lack of personal jurisdiction on May 31, 2005. Inline filed its opposition to that motion on June 13, 2005. Inline's opposition attached approximately one inch of documentary exhibits. In addition, Inline filed a "Declaration of John C. Donovan" that included an additional three inches of documentary exhibits relating to the personal jurisdiction motion. Many of these documentary exhibits were obtained

² Inline's characterizations of discussions between counsel in its motion to compel, and its assertion that the OTC movants refused to negotiate informal discovery, are not correct. Inline's motion provides only selected, incomplete correspondence, and omits the June 16, 2005 letter from Verizon's counsel to Inline's counsel (which is attached as Exhibit 1 to the accompanying Declaration of John B. Wyss). The June 16 letter accurately summarizes the prior dealings between counsel. Inline's counsel never responded to the request in the June 16 letter for continued negotiations. *See* Wyss Declaration, ¶2.

by Inline in November of 2004, five months before the present lawsuit was filed. Inline did not initiate any formal discovery, but elected instead to rely upon the thousands of pages of documentary exhibits that it had already collected before the motion to dismiss was filed. The OTC Movants' motion to dismiss for lack of personal jurisdiction was fully briefed on June 16, 2005 and is now *sub judice*. Inline's election to proceed on the basis of the thousands of pages of documentary exhibits submitted with its June 13, 2005 opposition, rather than to initiate formal discovery, constitutes a waiver of further personal jurisdiction discovery. In addition, the service of additional discovery long after the motion to dismiss has been fully briefed and submitted to the Court for resolution is untimely and appears designed to burden defendants and disrupt orderly disposition of the pending threshold motions.

The issue of personal jurisdiction in patent cases is governed by Federal Circuit law.

Beverly Hills Fan Co. v. Royal Sovereign Corp., 21 F.3d 1558, 1564 (Fed. Cir. 1994).

Procedural issues regarding timeliness of discovery requests concerning personal jurisdiction, however, are governed by Fourth Circuit law. *Commissariat A L'Energie Atomique v. Chi Mei Optoelectronics Corp.*, 395 F.3d 1315, 1322-23 (Fed. Cir. 2005) ("On procedural issues such as the timeliness of discovery requests, we are guided by the law of the regional circuit in which the district court sits.")

The decision whether or not to permit additional jurisdictional discovery is a matter committed to the sound discretion of the district court. *See, e.g., Base Metal Trading, Ltd. v. OJSC "Novokuznetsky Aluminum Factory,"* 283 F.3d 208, 216 n. 3 (4th Cir. 2002); *ALS Scan, Inc. v. Digital Services Consultants, Inc.*, 293 F.3d 707, 716, n. 3 (4th Cir. 2002). As the Fourth Circuit noted in *ALS Scan*, the district court properly refused to allow additional discovery before ruling on the jurisdictional issue. The plaintiff in that case, like Inline here, "has not suggested that the jurisdictional facts asserted by [Defendant] in its affidavits are inaccurate." 293 F.3d at 716 n.3. Rather, the plaintiff, again like Inline, merely presented conclusory allegations to support its request for additional discovery hoping that something might turn up. Similarly, additional jurisdictional discovery is not required where "plaintiff simply wants to conduct a

fishing expedition in hopes of discovering some basis of jurisdiction” *Base Metal*, 283 F.3d at 216 n. 3.

The factual circumstances in the present case are similar to those addressed in *Second Amendment Foundation v. United States Conference of Mayors*, 274 F.3d 521 (D.C. Cir. 2001). The plaintiff in that case – like Inline here – was faced with a motion to dismiss for lack of personal jurisdiction and fully responded to the motion on the merits. After its merits arguments were fully briefed and rejected, plaintiff then sought a second bite at the apple, arguing that it should be allowed to take additional jurisdictional discovery. The Court of Appeals rejected this belated claim on grounds that plaintiff had already fully responded to the personal jurisdiction motion on the merits and had not “defended against the [defendants’] motion to dismiss on ground that it had not yet taken such discovery.” *Id.* at 525 (“To get discovery, however, one must ask for it”).³

Under *ALS Scan*, *Base Metal* and *Second Amendment Foundation*, the Court should reject Inline’s belated motion to compel additional jurisdictional discovery as untimely. Inline did not defend against the OTC movants’ May 31, 2005 motion to dismiss on ground that additional discovery was necessary. Instead, Inline made a conscious election to oppose the motion to dismiss on the merits and to proceed on the basis of some 1,000 pages of documentary exhibits which it had assembled. The motion to dismiss was fully briefed on the merits on June 16, 2005, and is due to be set for hearing shortly. The Court should not permit Inline to disavow its

³ Inline’s assertion in its Motion to Compel Memorandum (p. 7) that its original merits briefing on the personal jurisdiction threshold motion “alerted the Court to the likelihood that Inline would seek discovery related to personal jurisdiction” is not factually supported. At no time did Inline’s merits opposition memorandum state that Inline either needed to or would seek additional personal jurisdiction discovery in the future, but merely included vague, conclusory assertions about what unspecified future discovery might show. *See Second Amendment Foundation*, 274 F.3d at 525 (rejecting vague assertions that “after discovery . . . we fully expect that there will be evidence developed”).

previous election and use its belated motion to compel to delay prompt disposition of the pending threshold motions.

III. Inline's Document Requests Are Overbroad, Unduly Burdensome And Do Not Address The Uncontroverted Jurisdictional Facts.

A. Inline Does Not Dispute That Each Operating Telephone Company Provides Local Telecommunications Services Solely Within Defined Geographic Territories (Other Than Virginia) Pursuant to FCC and State Regulation.

The claims of the Inline patents asserted in this case require the local consumer to install a very specific configuration of equipment (*e.g.*, modems, filters, internal branch lines and telephone devices) in his or her residence.⁴ The individual telephone operating company's involvement with DSL-related internet access is limited solely to the provision of local voice and data signal transfer services in that telephone operating company's licensed geographic territory.

Inline does not dispute the jurisdictional facts set forth in the OTC movants' declarations regarding the purely local nature of the telecommunications services they provide to their customers. As a matter of law, the OTC movants cannot provide any telecommunications services in Virginia, and have no involvement whatsoever with the sale or use of ADSL services within Virginia. Accordingly, they have not and cannot conduct any activities within the Commonwealth of Virginia that would give rise to a claim for infringement of the Inline patents necessary to support the exercise of personal jurisdiction. Tellingly, Inline does not contend otherwise. See *ALS Scan*, 293 F.3d at 716 n.3 (additional jurisdiction discovery denied where plaintiff "has not suggested that the jurisdictional facts asserted by [Defendant] in its affidavits are inaccurate"); *Base Metal*, 283 F.3d at 216 n.3 (rejecting additional "fishing expedition" discovery requests).

⁴ See Plaintiff Inline Connection Corporation's Memorandum In Support Of Motion To Compel Responses To Inline's First Sets Of Requests For Production And Interrogatories (August 1, 2005) at p. 4, conceding that infringement occurs only when the individual subscriber's residence is properly "configured."

As shown below, Inline's belated discovery requests simply do not address the undisputed jurisdictional facts establishing the purely local nature of the telecommunications services provided by each OTC movant, and therefore provide no basis for disrupting the orderly disposition of the fully briefed threshold motions.

B. Inline's Request For Agreements Containing "Virginia Choice of Law" Provisions Is Unduly Burdensome And Demands An Irrelevant Wild Goose Chase For Agreements That Are Likely Non-Existent.

Inline's motion to compel (pp. 5-6) focuses first on Request for Production No. 4. This request and the OTC movants' objections thereto are as follows:

Request for Production No. 4: All Agreements, other than the terms of service between Verizon Internet, Inc. or GTE.Net LLC and an End User, executed by or on behalf of a Moving OTC that contains a Virginia choice of law provision, or a Virginia choice of forum provision.

Objection to Request for Production No. 4: Defendants object to this request for production on the grounds that it is untimely, overbroad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence concerning the personal jurisdiction issues and incorrectly asserts that the terms of service agreements between Verizon Internet, Inc. or GTE.net LLC and their respective end user customers are executed by or on behalf of any of the Moving OTCs. Agreements entered by or on behalf of each individual Moving OTC are not indexed according to their choice of law provisions. A typical choice of law provision in an agreement involving multiple OTCs would specify that: "As to each OTC, this Agreement shall be governed and construed in accordance with the laws of the state where such OTC is authorized to provide service."

Inline's assertion in its motion to compel that "the OTCs compel their customers to litigate disputes in Virginia" (Mem. at 5) grossly misstates the factual record. Operating telephone companies do not sell any accused ADSL services to retail customers. Such services are sold by ISPs (e.g., AOL, Earthlink, GTE.net, Verizon Internet Services) to their subscribers. The OTC

movants are not parties to, nor do they have any control over, the terms and conditions on which individual ISPs contract with their retail customers.⁵

As Inline is aware from the Amended and Restated Sales Agency Agreement referenced at page 6 of its memorandum, agreements to which the OTC movants are, in fact, parties do not normally include a Virginia choice of law provision. To the contrary, the typical provision included in the above-referenced agreement states as follows:

3. **Choice of Law.** As to each OTC, this Agreement shall be governed and construed in accordance with the state where such OTC is authorized to provide services. . . .

As set forth in the OTC movants' objection to Request No. 4, the agreements executed by or on behalf of an OTC movant are not indexed according to their choice of law provisions. Although there is little reason to believe that any responsive agreement exists, to respond to Request No. 4 each OTC movant would have to review all of its agreements looking for a possible needle in a haystack. This is unduly burdensome and unreasonable, and would not controvert any of the controlling jurisdictional facts established in the OTC movants' declarations.

C. The Remaining Document Requests Are Overbroad, Unduly Burdensome And Do Not Address The Jurisdictional Facts.

The remaining document requests addressed in Inline's motion to compel are Nos. 1, 2, 4, 5 and 8. In each instance, the request is not only untimely, but is also overbroad, unduly burdensome and not directed to the relevant jurisdictional facts establishing that each of the OTC

⁵ The "terms of service" agreements used by GTE.net and Verizon Internet Services are attached as Exhibits 2 and 3 to the accompanying Declaration of John B. Wyss. The agreements are solely between the ISP defendants and their customers, and none of the OTC movants is a party.

movants does not and cannot provide any DSL-related telecommunications services in Virginia. Despite repeated discussions among counsel, Inline was not willing to narrow these requests.⁶

Request No. 1: This request calls for the production of “[a]ll agreements executed on behalf of all or some of the Moving OTCs by Verizon Services Corporation or Verizon Avenue Corp.” On its face, the request does not purport to address or controvert the undisputed fact that each OTC movant only provides tariffed telecommunications services to customers located in the specific geographic territory (which does not include Virginia) in which it is licensed to offer service. Moreover, as explained in the OTC Movants’ objection to this request:

For matters of administrative convenience, each individual Verizon-affiliated operating telephone company has, from time to time, authorized other Verizon-affiliated corporate entities to execute certain agreements on its behalf. To the extent such agreements concern the provision of services by an individual operating telephone company to another party, such services are generally provided within the geographic areas in which the individual telephone operating company has been authorized by pertinent state regulatory commissions to provide telecommunications services. None of the Moving OTCs provides or is authorized to provide telecommunications services in the Commonwealth of Virginia. Agreements relating to the provision of services by one of the non-resident moving OTCs in its authorized geographic service areas (which do not include Virginia), irrespective of whether or not the agreement was executed directly by that Moving OTC or on its behalf by some other entity, does not subject the Moving OTC to general personal jurisdiction in Virginia. Nor does such an agreement support the exercise of special personal jurisdiction in Virginia with respect to services provided by a Moving OTC that are performed outside of Virginia in that Moving OTC’s authorized geographic service areas.

In the present circumstances, with the fully briefed threshold motions soon to be argued, this request is precisely the type of irrelevant, overbroad, and unduly burdensome “fishing expedition” that the Fourth Circuit rejected in the *Base Metal* case.

Request No. 2. This request calls for production of “[a]ll agreements” executed between any OTC movant and certain of the other defendants. Once again the request is extremely

⁶ See accompanying Declaration of John B. Wyss, at ¶ 4.

overbroad and burdensome and does not address the controlling jurisdictional facts. As a matter of law and State regulation, each operating telephone company is required to deal with other affiliated Verizon entities pursuant to written agreements. The existence of such agreements does not change the uncontroverted fact that each OTC movant only provides DSL-related telecommunications services in its respective authorized service areas (which do not include Virginia) pursuant to published tariffs.

Request No. 3. This request calls for production of documents sufficient to show the nature and types of services provided to the OTC movants by affiliated Verizon entities that may have some connection with Virginia. In addition to being untimely and overbroad, this request has nothing to do with Inline's cause of action for patent infringement relating to the provision of splitterless ADSL services. Each of the OTC movants, like millions of other companies throughout the nation, will from time to time contract for services with other entities located in other states, including Virginia. Such contracts do not subject a company to the general jurisdiction of each and every state in which one of its suppliers is located, nor do they support the exercise of special personal jurisdiction in any such state, except possibly for a potential breach of contract cause of action directly related to a contract executed and/or performed in a particular state.

Request No. 5. This request calls for production of all agreements executed by or on behalf of any OTC movant and American Online, Inc. or any other ISP with a business address in Virginia. As set forth in the declarations submitted in support of the OTC movants May 31, 2005 motion to dismiss, the OTC movants provide local voice and data signal transfer point services for ISPs in their respective licensed geographic territories (which do not include Virginia). These services are provided pursuant to published FCC tariffs, *i.e.*, The Verizon

Telephone Companies Tariff FCC No. 1 and the Verizon Telephone Companies Tariff FCC No. 20, Part III Section 5.3, which are incorporated by reference in the standard ISP agreement. At Inline's request, copies of these tariffs have been produced in response to Inline's first set of document requests. The tariffs expressly confirm that each OTC movant only provides DSL-related telecommunications services to customers located in the specific geographic territory where that OTC is authorized to offer service.

Request No. 8. This request goes far beyond any of the personal jurisdiction issues.

Instead, it is directed to merits discovery concerning such matters as "DSLAMs, Remote Location DSLAMs, DSL Self-Install Kits" and various "specifications, requirements, standards compliance, testing, approvals [and] recommendations" with respect thereto. Inline should not be allowed to embark upon open-ended merits discovery "through the backdoor" with belated document requests purportedly directed to personal jurisdiction issues. For the reasons set forth in Defendants' pending motion to stay merits discovery, substantive merits discovery should be stayed until the pending threshold transfer and personal jurisdictions motions are resolved.

CONCLUSION

For the foregoing reasons, Inline's motion to compel directed against the OTC movants should be deferred until after the transfer motion is heard or, in the alternative, should be denied on grounds that it is untimely, will disrupt orderly disposition of the pending threshold motions, does not controvert or address the controlling jurisdictional facts, and is unreasonably overbroad and burdensome.

Respectfully submitted,

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Dated: August 12, 2005

Counsel for Verizon Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of August, 2005, a true copy of the foregoing
***Operating Telephone Company Defendants' Opposition To Inline's Motion To Compel
Production Of Document*** was sent to plaintiff's counsel, in the manner indicated, upon:

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Steven R. Zahn

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

Inline Connection Corporation,

Plaintiff,

v.

Verizon Internet Services, Inc., et al.,

Defendants.

Civil Action No. 2:05CV205

**DECLARATION OF JOHN B. WYSS IN SUPPORT OF OPERATING
TELEPHONE COMPANY DEFENDANTS' OPPOSITION TO
INLINE'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

I, John B. Wyss, declare:

1. I am an attorney with the law firm of Wiley, Rein & Fielding LLP, counsel to Defendants. I have personal knowledge of the facts set forth in this declaration.

2. Attached hereto as Exhibit 1 is a true and correct copy of my June 16, 2005 letter to Ms. Van Over, counsel to plaintiff Inline Connection Corporation ("Inline"), concerning Inline's informal requests for documents. This letter accurately summarizes my communications with Inline's counsel during the period June 7-16, 2005. Ms. Van Over did not respond to my request that she call me so that we could discuss the individual documents in further detail.

3. Inline filed its "Second Set of Requests For Production of Documents And Things To Defendants" on June 24, 2005. Defendants timely filed their objections to these document requests on July 11, 2005.

4. On July 25, 2005, as part of a longer conference call concerning other discovery issues, I discussed Defendants' objections to Inline's Second Set of Document Requests with

Inline's counsel. I explained Defendants' concerns that the requests were untimely and appeared designed to disrupt the Court's orderly disposition of the pending threshold motions. I further explained that the individual requests were both overbroad and unduly burdensome, and did not pertain to the jurisdictional facts regarding the purely local nature of telecommunications services actually provided by the non-resident operating telephone company defendants. I invited Inline's counsel to focus the requests to eliminate the problems of overbreadth and burden, and to help us understand the specific types of documents Inline was seeking and how such documents might relate to the jurisdictional facts. Inline's counsel were not willing to narrow or limit the requests.

5. Attached hereto as Exhibits 2 and 3 are true and correct copies of the "terms of service" agreements used by GTE.net and Verizon Internet Services with their respective subscribers.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed in Washington, D.C. on August 11, 2005.

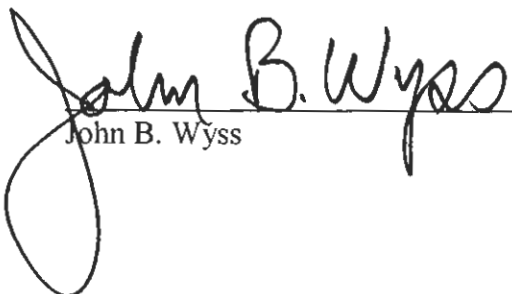

John B. Wyss

Exhibit 1



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June 16, 2005

John B. Wyss
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Via Email

C. Joël Van Over, Esq.
HellerEhrman LLP
333 Bush Street
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Re: *Inline Connection Corp. v. Verizon Internet Services, Inc. et al.*
Case No. 2:05CV205 HCM

Dear Joël:

Thank you for your June 15 letter which we received this morning. As indicated in my email, I do not believe that your letter accurately reflects our conversation on Monday or my prior dealings with Mike Plimack.

After the close of business on June 6, Mike sent a letter to Adam Bernstein which included eleven informal requests for documents. The requests purportedly related to the motion to dismiss for lack of personal jurisdiction filed by certain OTC defendants on May 31. When we received Mike's letter on June 7, I responded that same day.

As stated in my June 7 letter, we were sorry that Inline had delayed in making its informal requests and that, on their face, many of the requests were overbroad, unreasonably burdensome and/or irrelevant to the personal jurisdiction issue. I then went through each of the individual requests identifying our concerns and inviting Mike to call me so we could try to reach a reasonable accommodation.

That is the last I heard from Mike or any of Inline's other counsel about this matter until you called me on June 10 a few minutes before our scheduled Rule 26(f) conference. I said I would be happy to discuss the concerns raised in my June 7 letter when the conference was concluded and invited you to call me back at that time. You chose not to do so, but instead waited until the afternoon of June 13.

When we spoke on June 13, I reiterated the concerns expressed in my June 7 letter and asked you to narrow down the requests and identify the specific types of documents that you had in mind that might be relevant to the OTC movants' personal jurisdiction motion. Unfortunately, you declined to do so during our conversation. Needless to say, I was surprised when we received Inline's opposition papers the next day, including various agreements and other documents that have been in your possession for many months (e.g., most of the printouts are

Wiley Rein & Fielding LLP

C. Joël Van Over, Esq.
June 16, 2005
Page 2

dated in November 2004). I wish you had been more forthcoming during our telephone conversation so that we could have made more progress.

With respect to the paragraphs in my June 7 letter, the one agreement that we have identified between the OTC movants and the other identified defendants that relates, in part, to the accused ADSL service marketed and sold by GTE.net and VIS is the DSL Premises Services Agreement which you already have. Likewise, you already have several examples of agreements signed by a Services Defendant on behalf of an OTC defendant; however, none of those agreements directly concern the accused ADSL service. As for choice of law provisions, the Amended and Restated Sales Agency Agreement, for example, provides that the "choice of law" for each OTC is "the laws of the state where such OTC is authorized to provide services." We have been unable to identify any agreements between AOL and any of the individual OTC movants. With respect to VADI, we have provided you with a narrative description in our reply memorandum that is being filed today.

Now that we have filed our reply memoranda, I would be happy to discuss Mike's individual requests with you in further detail and in light of the filings made by both sides with the Court. Please call me at your convenience after you have had a chance to review the reply filings.

Sincerely yours,



John B. Wyss

cc: Stephen E. Noona, Esq. (via email)
Michael K. Plimack, Esq. (via email)
Robert McFarland (via email)

Exhibit 2



VERIZON INTERNET ACCESS TERMS OF SERVICE

Welcome to Verizon!

THESE TERMS AND CONDITIONS STATE IMPORTANT REQUIREMENTS REGARDING YOUR USE OF VERIZON'S INTERNET ACCESS SERVICE AND YOUR RELATIONSHIP WITH VERIZON.

YOU SHOULD READ THEM CAREFULLY AS THEY CONTAIN IMPORTANT INFORMATION REGARDING YOUR RIGHTS AND OURS.

IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, YOU MAY NOT USE THE SERVICE AND YOU MUST TERMINATE YOUR SERVICE IMMEDIATELY.

1. These Terms of Service (the "Agreement") are entered into by and between the subscriber ("you", "your", or "Subscriber") and GTE.Net LLC or its affiliates as defined in Exhibit A of this Agreement d/b/a Verizon Internet Solutions ("Verizon", "us" or "we"). The Agreement sets forth the terms and conditions under which you agree to use the Service, and under which Verizon agrees to provide the Service to you.

Acceptance of this Agreement. You are deemed to have accepted this Agreement upon the earlier of: (a) your submission of an online order; (b) your accepting the Terms of Service electronically during registration or in the course of installing the Software (see Paragraph 4) or the Equipment (see Paragraph 2); (c) your use of the Service (see Paragraph 2); or (d) your retention of the Software or Equipment we provide beyond 30 days following delivery. This Agreement is made up of the terms below, plus the Acceptable Use Policy, Privacy Policy, all Attachments to this Agreement, and the other policies and materials specifically referred to in these Terms of Service, all of which are incorporated herein by reference. The Agreement and related policies are also set forth on the Verizon website (<http://www2.verizon.net/policies/>) ("Website") and can be found under the Policies Section of the Resource Center. You

3.4 If you select a pricing plan that includes a predetermined allocation of Services (for example, 150 hours of Dial-up Service), unused allotment of Services from one billing cycle will not carry over to any other billing cycle.

- 3.5 If you subscribe to Dial-up Service:

A. You may not resell the Dial-up Service, use it for high volume purposes, or engage in similar activities that constitute such use (commercial or non-commercial), or use it as a dedicated line, as determined solely by Verizon. If your account is idle for fifteen minutes, it will be subject to log-off automatically and without notice. An account session may be deemed to be idle if there appears to be no interactive, human generated data received from the remote user's computer system within a prescribed amount of time. Automated data is not considered interactive or human generated. Automated data includes but is not limited to data generated by an automatic redialer, script or other program that runs on a computer system for the purpose of avoiding inactivity disconnects, and the automated checking of email or "pinging" the host to maintain a constant connection.

B. You may only use your account for one log-on session per connection type at a time. You may not use more than one IP address for each log-on session.

C. You may not use the Dial-up Service to host any type of server personal or commercial in nature.

- 3.6 If you subscribe to Broadband Service:

A. You may not resell the Broadband Service, use it for high volume purposes, or engage in similar activities that constitute resale (commercial or non-commercial), as determined solely by Verizon.

B. You may connect multiple computers/devices within a single home or office location to your Broadband modem and/or router to access the Service, but only through a single Broadband account and a single IP address obtained from Verizon.

C. Where available, Broadband customers may use their Broadband accounts to connect through an analog connection, but these connections will be subject to usage thresholds and additional per hour and monthly charges, depending on the Service to which you subscribed.

D. Additional User IDs provided for Broadband customers email boxes are not intended for use as dial-up connections. Any usage associated with additional email box User IDs will be charged the per hour rate associated with usage above the monthly allotment for analog Dial-up Service (where available). The number of mailboxes available to you depends upon the Service to which you have subscribed.

E. You may not use the Broadband Service to host any type of server personal or commercial in nature.

- 3.7 Verizon reserves the right to audit connections electronically to enforce these or any other provision of the Agreement.

4. **PRIVACY POLICY.** Verizon will treat your personal information in accordance with its current Privacy Policy, subject to change from time to time, which is posted on the Website under the Policies Section of the Resource Center. You agree to the terms of the Privacy Policy, which describes Verizon's use and disclosure of information about your account and your use of the Service.

5. **ACCEPTABLE USE POLICY.** You agree to comply with the terms of the Acceptable Use Policy, which is attached hereto as Attachment A and which also may be found posted on the

found under the Policies Section of the Resource Center. You may also receive a copy of this Agreement either by telephoning Verizon at 800-567-6789 or by writing to us at: Verizon, 400 Foxcroft Avenue, Martinsburg, WV 25401, Attention: Customer Service.

2. **DEFINITION OF SERVICE.** For purposes of this Agreement the term "Service" shall mean the Verizon Internet access service, including all Software (as defined in Paragraph 9 below), Equipment, technical support, newsgroup services, email and other features, products and services provided by Verizon under the pricing plan that you have selected. The Service does not include voice telephony services over the public switched telephone network. For purposes of this Agreement, "Equipment" shall mean the modem, router and/or other equipment provided by Verizon for use with your Service. The Service may be referred to as, "Verizon Fios Internet Service", "DSL Service", "Verizon Online DSL", "Verizon DSL", "Dial-up Service" or "Verizon Online Dial-up". Verizon Fios Internet Service and DSL are collectively referred to as "Broadband Services."
3. **AUTHORIZED USER, USE, AND RESPONSIBILITIES.**
 - 3.1 You acknowledge that you are 18 years of age or older, and you agree that you have the legal authority to enter into this agreement and affirm that the information you supply to us is correct and complete. You understand that Verizon relies on the information you supply and that providing false or incorrect information may result in Service provisioning or delivery delays or the suspension or termination of your Service. You agree to promptly notify Verizon whenever your personal or billing information changes (including for example, your name, address, telephone number, and credit card number and expiration date).
 - 3.2 We will provide you with or, if available in your area for your chosen Service, you will choose, a User ID and/or Verizon User Name (collectively, "User ID") and password for each account purchased to enable you to access the Service. You agree to protect your User ID and to pay for all activity associated with it.
 - 3.3 You agree that you are responsible for all use on your account, including any secondary accounts or sub-accounts registered to your primary account. You understand this means that you accept full liability and responsibility for the actions of anyone who uses the Service via your account, or any secondary accounts, with or without your permission. You also agree to use the Service only within the United States.

6. **REVISIONS.** We may revise the terms and conditions of this Agreement from time to time (including any of the policies which may be applicable to usage of the Service) by posting such revisions to the Website at the Resource Center under Announcements. You agree to visit these pages periodically to be aware of and review any such revisions. Increases to the monthly price of the Service (excluding other charges as detailed in §13.1(a)-(d)) shall be effective thirty (30) days after posting; revisions to any other terms and conditions shall be effective upon posting. By continuing to use the Service after revisions are in effect, you accept and agree to the revisions and to abide by them. If you do not agree to the revision(s), you must terminate your Service immediately.
7. **ALIASES.** Verizon will issue email aliases (alternate email addresses) based upon availability of the alias selected. If you surrender your alias by changing it, or if your account is terminated for any reason, Verizon will not reserve that alias for you or receive or forward emails addressed to that alias.
8. **AVAILABILITY OF SERVICE.**
 - 8.1 The Service you select may not be available in all areas, may not be available at the rates, speeds, or bandwidth generally marketed, and some telephone lines may not qualify for the Service even if initial testing showed that your line was qualified. For DSL Subscribers, we will provision your qualified line for DSL at the maximum line rate available to your location based on our standard line qualification procedures, unless you have selected a level of service with a lower maximum line rate. All Services are provided on an AS IS basis and throughput speeds, line rate access to Usenet newsgroups and availability of your Service are not guaranteed (see Paragraph 16.) Verizon reserves the right to limit Usenet download speeds.
 - 8.2 Verizon or its suppliers may, at any time, without notice or liability, restrict the use of the Service or limit its time of availability in order to perform maintenance activities and to maintain session control.
 - 8.3 Broadband Services utilizes transport service provided by your local Verizon telephone company. If you change your local telephone company, or move your local telephone service to a wireless service provider we may in our discretion either terminate your account or continue to provide Broadband service at existing rates terms and conditions. If your local Verizon telephone company provisions transport service to your location utilizing fiber optic technologies, we may in our discretion terminate your DSL Service. In cases of such termination, we will offer to you Verizon Fios Internet Service and we will disclose to you applicable rates and additional terms, if any, that may differ from the DSL Services provided under this Agreement.
9. **SOFTWARE LICENSES AND THIRD PARTY SERVICES.**
 - 9.1 In connection with our provision of the Service, we may provide to you, via download, CD, other media, or other delivery method, the use of certain software which is owned by Verizon or its third party licensors, providers and suppliers, and which may be provided free or for a fee, including client and/or network security software ("Software"). We reserve the right to update or change the Software from time to time and you agree to cooperate in performing such steps as may be necessary to install any updates or upgrades to the Software. You may use the Software only as part of or for use with the Service and for no other purpose.
 - 9.2 The Software may be accompanied by an end user license agreement from Verizon or a third party. Your use of the

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Version: 0205

Part #: TOSGUIDEW



Software is governed by the terms of its license agreement and by this Agreement, where applicable. You may not install or use any Software that is accompanied by or includes an end user license agreement unless you first agree to the terms and conditions of the end user license agreement.

9.3 With regard to any Software which is not accompanied by an end user license agreement, you are hereby granted a revocable, non-exclusive, non-transferable license by Verizon or its third party licensors, providers or suppliers, to use the Software (and any corrections, updates and upgrades). You may not make any copies of the Software. You agree that the Software is the confidential information of Verizon or its third party licensors, providers or suppliers, which you shall not disclose to others or use except as expressly permitted herein. The Software contains copyrighted material, trade secrets, patents, and proprietary information owned by Verizon or its third party licensors, providers, or suppliers. You may not de-compile, reverse engineer, disassemble, attempt to discover any source code or underlying ideas or algorithms of the Software, otherwise reduce the Software to a human readable form, modify, rent, lease, loan, use for timesharing or service bureau purposes, reproduce, sublicense or distribute copies of the Software, or otherwise transfer the Software to any third party. You may not remove or alter any trademark, trade name, copyright or other proprietary notices, legends, symbols, or labels appearing on or in copies of the Software. You are not granted any title or rights of ownership in the Software. You acknowledge that this license is not a sale of intellectual property and that Verizon or its third party licensors, providers or suppliers continue to own all right, title and interest, including but not limited to all copyright, patent, trademark, trade secret, and moral rights, to the Software and related documentation, as well as any corrections, updates and upgrades. The Software may be used in the United States only, and any export of the Software is strictly prohibited.

9.4 We provide technical assistance and support for the Software in accordance with our policies. Unless otherwise provided in such policies, Verizon does not provide technical assistance or support for any third party Software. Technical assistance or support with regard to third party software provided by the Software supplier is solely provided in accordance with such third party's policies or other terms.

9.5 Your license to use the Software shall remain in full force and effect unless and until terminated by Verizon, its third party licensors, providers or suppliers, or until your Service is terminated. Upon termination of your Service for any reason, you must cease all use of the Software and immediately delete the Software from your computer.

9.6 **Other Third Party Agreements.** If you subscribe to or otherwise use any third party services offered by or through Verizon, your use of any such services is subject to the terms of services of such third party service provider. You agree to comply with such provider's terms of service and that the third party provider is solely responsible for delivery of its service(s) to you and your use of them. Third party services include, but are not limited to, portal, music, gaming, storage and photography services that Verizon may elect to make available from time to time. Violation of such third party provider's terms of service may, in Verizon's sole discretion, result in the termination of your Service.

10. PERSONAL WEB SPACE AND STORAGE.

Personal Web Space ("PWS") may be made available to you as an optional feature of the Service. Additional terms and conditions applicable to PWS, including pricing if applicable, are posted on the Website at My Web Space. In the event of a breach by you of this Agreement or the terms and conditions

Agreement prior to the end of the first year of service and you received Equipment at no charge from Verizon, you will be required to return the Equipment to Verizon; failure to do so will result in an additional equipment charge. We will provide you with a pre-paid mailing label and instructions for the return of your Equipment. Termination by Verizon shall be effective thirty (30) days after the date of notice to you, except as otherwise provided in this Agreement. In the event of termination by Verizon, for any reason, you will be required to pay the remaining balance of the charges applicable to your Service through the effective date of termination.

12.3.2 **Broadband Subscribers with Annual Service Contracts-Termination Fee.** The term for Broadband Service customers with an annual service commitment is for twelve (12) consecutive months beginning on: (a) the date you change your existing Broadband Service plan to an annual Service contract; or (b) the Service Ready Date, whichever is later, and continuing thereafter on a month-to-month basis until terminated by either party as permitted by this Agreement. IN THE EVENT THAT YOU TERMINATE YOUR BROADBAND SERVICE BEFORE COMPLETING TWELVE (12) MONTHS OF SERVICE UNDER YOUR ANNUAL PLAN, THEN YOU AGREE TO PAY VERIZON UPON DISCONTINUANCE OF THE SERVICE A TERMINATION FEE IN THE AMOUNT AS SET FORTH IN THE PRICING PLAN YOU HAVE CHOSEN (THE "EARLY TERMINATION FEE"). In addition to any applicable Early Termination Fees, you will be required to pay the remaining balance of the charges applicable to your Service through the effective date of termination. After the end of your Initial Term agreement with us, you may be given the option to enter into a new annual contract for a new one-year term subject to the terms and conditions for the annual plan, if any, in effect at that time. Broadband customers with a twelve (12) month service commitment who move to a new location can sign up for a new annual plan at the new location if the Service and an annual plan are available. Existing annual plans cannot be carried over to a new Service location.

12.3.3 **Termination and/or Suspension by Verizon.** If, in the sole discretion of Verizon: (a) you are in breach of any of the terms of this Agreement (including but not limited to) all policies regarding abuse and acceptable use of the Service); (b) your use of the Service is prohibited by law or is disruptive to, adversely impacts or causes a malfunction to the Service, Verizon's network, or the use and enjoyment of other users; or (c) Verizon receives an order from a court to terminate your service; (d) if Verizon for any reason ceases to offer the Service; or (e) if you are no longer a Verizon local telephone subscriber as set forth in Paragraph 8.3, then Verizon at its sole election may terminate or suspend your Service immediately without notice. For termination in accordance with this Paragraph 12.3.3, you shall be liable for the applicable fees and/or Equipment charges set forth in Paragraphs 12.2, 12.3.1, or 12.3.2, (depending on which fees or charges are applicable).

12.4 **Terminated Account.** Verizon, in its sole discretion, may refuse to accept your application for Service following a termination or suspension of your use of the Service. If your Service is terminated for any reason, you agree to pay a reconnection fee if the Service is reactivated.

12.5 **Regulatory Compliance.** In the event there is a ruling, regulation, or order issued by a judicial, legislative or regulatory body that causes Verizon to believe that this Agreement may be in conflict with such rules, regulations, and orders, Verizon may terminate or modify your Service and/or this Agreement immediately without notice.

12.6 **Deletion of Data upon Termination.** You agree that if your Service is terminated for any reason, Verizon has the right to immediately delete all data, files, and other information stored

applicable to you. Verizon reserves the right to terminate your PWS without notice. Verizon reserves the right to delete all data, files, and other information stored on or for your PWS upon termination of your Service for any reason. You understand that we do not provide telephone technical support for PWS.

11. **EMAIL AND EMAIL MESSAGING SERVICE.**

11.1 **EMAIL SERVICE.** Use of Verizon email service is subject to Verizon's email and anti-spam policies, including limitations on the number and/or size of email that may be sent during a given time period, or the number of recipients of a particular email.

11.2 **EMAIL MESSAGING SERVICE.** Email Messaging Service ("EMS") may be made available to you as an optional feature of certain Broadband packages if you have your own domain name. Additional terms and conditions applicable to EMS, including pricing if applicable, are posted in the My Account page on the Website under the Verizon E-Mail Tools Section. In the event of a breach by you of the terms and conditions applicable to EMS, Verizon reserves the right to terminate your EMS immediately without notice. Verizon also reserves the right to delete all data, files, and other information stored on or for your EMS upon termination of your Service for any reason.

12. **TERM AND TERMINATION.**

12.1 **Effective Date and Term.** This Agreement goes into effect upon your acceptance of this Agreement as set forth in Paragraph 1 and shall continue, subject to the terms of this Paragraph 12, until terminated by either party as permitted by this Agreement. Billing for your Dial-up Service will automatically begin upon registration of your service. Billing for your Broadband Service will automatically begin on the date provisioning of your Broadband is complete and ready for use ("Service Ready Date").

12.2 **Money Back Guarantee.** Verizon provides a thirty (30) day money back guarantee as follows:

For Broadband Service, your thirty (30) day money-back guarantee begins upon your Service Ready Date. During this thirty (30) day period you may cancel the Broadband Service and receive a full refund of all monthly charges paid as well as any one-time charges and equipment charges paid to Verizon (provided you return all Equipment in good working condition.) If you cancel your Broadband Service prior to your Service Ready Date or within the thirty (30) day money-back guarantee period, you will be required to return to Verizon any Equipment provided to you by Verizon; Verizon will provide you with a pre-paid mailing label and instructions for the return of your Equipment. In the event you fail to return the Equipment, an additional charge for the unreturned Equipment will apply. Early termination fees shall not apply to Service terminated within the thirty (30) day money-back guarantee period. The thirty (30) day money-back guarantee does not apply to customers who change between monthly, annual, bundle or other pricing plans.

12.3 **Termination of Service.**

12.3.1 **Broadband or Dial-up Subscribers with Month-to-Month Accounts.** If you are a month-to-month Broadband Service or Dial Up Service customer, either you or Verizon may terminate this Agreement without cause by giving notice to the other in accordance with the notice provision set forth at Paragraph 18 below. Termination by you will be effective upon your notice to Verizon. Activation or set-up fees paid at the initiation of your Broadband Service, if any, are not refundable, except during the thirty (30) day money-back guarantee period. Additionally, if you terminate this

13. **PRICING AND PAYMENT.**

13.1 **Prices and Fees.** Verizon fees and charges for the Service(s) you select are supplied to you during the ordering process unless otherwise provided for in this Agreement. You agree to pay the charges applicable to your selected Service plan. You also agree to pay all other charges, including but not limited to a) applicable taxes, b) surcharges, c) recovery fees, d) telephone charges, e) activation fees, f) installation fees, g) set-up fees, h) equipment charges, i) termination fees, and j) other nonrecurring charges. The taxes, fees and other charges detailed in this section a)-d) may vary on a monthly basis; any variations will be reflected in your monthly charge. You also agree to pay any additional charges or fees applied to your billing account for any reason, including but not limited to, interest, and charges due to insufficient credit or insufficient funds. Set up fees, activation fees, installation fees, other non-recurring fees, and equipment charges, if applicable, will be included in your first month's bill. Monthly recurring charges will be billed one month in advance; usage charges will be billed in arrears, if applicable. Verizon or its agent will bill you directly, or bill your credit card or your local Verizon telephone bill (telephone billing available in selected areas only), as you request and as approved by Verizon. Verizon does not accept debit cards for payment of any charges or fees. IF YOU ELECT TO BE BILLED ON YOUR VERIZON PHONE BILL, BY USING THE SERVICES YOU AGREE TO HAVE VERIZON CHARGES INCLUDED ON YOUR PHONE BILL.

13.2 **Discontinuation of Service for Nonpayment.** Service to you may be denied or discontinued without notice at any time in the event the placement of Service charges on your telephone bill is refused for any reason, or your credit card provider denies or discontinues providing credit to you for any reason, or you fail to make payments when due or provide us with a new credit card expiration date before the existing one expires.

13.3 **Late Fees.** If any portion of your bill is not paid by the due date, Verizon may charge you a late fee on unpaid balances and may also terminate or suspend your Service without notice. The late fee will be the lesser of one and one-half percent (1.5 %) per month, or the highest rate permitted by law. In the event Verizon utilizes a collection agency or resorts to legal action to recover monies due, you agree to reimburse us for all expenses incurred to recover such monies, including attorneys' fees.

13.4 **Local telephone, Toll and Long Distance Charges.** Whether you are accessing the Service from your home or away from your home, you are responsible for all telephone charges, and Verizon does not guarantee or warrant that any dial-up access numbers provided will be a local call from your location. VERIZON IS NOT RESPONSIBLE FOR ANY CHARGES, INCLUDING BUT NOT LIMITED TO, LONG DISTANCE AND METERED LOCAL OR TOLL CHARGES INCURRED WHEN YOU ACCESS THE SERVICE. YOU SHOULD CHECK WITH THE LOCAL PHONE COMPANY TO DETERMINE WHETHER A DIAL-UP NUMBER YOU HAVE SELECTED IS A LOCAL CALL FROM YOUR LOCATION AND WHETHER ANY CHARGES APPLY. ADDITIONAL CHARGES, WHICH MAY BE SUBSTANTIAL, APPLY TO REMOTE DIAL UP ACCESS, WHICH IS AVAILABLE FROM CERTAIN LOCATIONS ONLY.

13.5 You are limited to taking advantage of no more than one special pricing promotion during any twelve-month period.

13.6 You have the option to change your Service(s) at any time by notifying us, provided that you qualify for and comply with any requirements of that Service.

- 13.7 The waiver of any fees or charges lies solely in the discretion of Verizon.

14. **MANAGEMENT OF YOUR DATA AND COMPUTER.**

- 14.1 **System Management and Service Performance.** You are solely responsible for obtaining, installing, configuring, and maintaining suitable equipment and software, including any necessary system or software upgrades, patches or other fixes, which are or may become necessary to access the Service and to operate your computer. You understand that bandwidth is provided on a per-line basis, and that the speed and bandwidth available to each computer or device connected to the network will vary depending upon the number, types and configuration of computers or devices using the Service and the type of use (e.g., streaming media or downloading larger files, etc.), network or Internet congestion, and/or the condition of your telephone line and the wiring inside your location, among other factors.
- 14.2 **Data Management and Responsibility.** You are responsible for management of your information, including but not limited to back-up and restoration of data (for example, address book and calendaring information), erasing data from disk space you control and changing data on or settings for your modem and/or router. Verizon is not responsible for the loss of your data or for the back-up or restoration of your data regardless of whether this data is maintained on our servers or your computer or server.
- 14.3 **Your Security.** You are responsible for development and maintenance of any security procedures you deem appropriate, such as logon security and encryption of data, User ID, alias, and password on your modem and/or router and firewalls, to protect your information. We are not responsible in the event that any party changes the information on your account, including without limitation, your alias, User ID, password, or security information. We are not responsible for backup and restoration of your information. WE STRONGLY RECOMMEND THE USE (AND APPROPRIATE UPDATING) OF COMMERCIAL ANTI-VIRUS AND FIREWALL SOFTWARE.
- 14.4 **Verizon Network.** For the purposes of backup and maintenance, we may use, copy, display, store, transmit, translate, rearrange, reformat, view and distribute your information to multiple Verizon servers. We do not guarantee that these procedures will prevent the loss of, alteration of, or the improper access to, your information.
- 14.5 **Monitor of Network Performance.** Verizon automatically measures and monitors network performance and the performance of your Internet connection and our network as part of this process. We also will access and record information about your computer's profile and settings and the installation of software we provide in order to provide customized technical support and you agree to permit us to access and record such data for the purposes described in this Agreement. No adjustments to your computer settings will be made without your permission. We do not share information collected for the purpose of network or computer performance monitoring or for providing customized technical support outside of Verizon or its authorized vendors, contractors and agents. You hereby consent to Verizon's monitoring of your Internet connection and network performance, and the access to and adjustment of your computer settings, as set forth above, as they relate to the Service or other services which we may offer from time to time.

15. **LIMITATIONS ON USE OF THE SERVICE.**

- 15.1 You agree that your use of the Service and the Internet, without limitation, is your sole responsibility, is solely at your

PURPOSE, ACCURACY, NON-INFRINGEMENT, NON-INTERFERENCE, TITLE, COMPATIBILITY OF COMPUTER SYSTEMS, INTEGRATION, AND THOSE ARISING FROM COURSE OF DEALING, COURSE OF TRADE, OR ARISING UNDER STATUTE. NO ADVICE OR INFORMATION GIVEN BY VERIZON OR ITS REPRESENTATIVES SHALL CREATE A WARRANTY. USE OF VERIZON TECHNICAL SUPPORT IS AT YOUR OWN RISK AND IS NOT WARRANTED.

- 16.2 VERIZON DOES NOT WARRANT OR GUARANTEE THAT SERVICE CAN BE PROVISIONED TO YOUR LOCATION, OR THAT PROVISIONING WILL OCCUR ACCORDING TO A SPECIFIED SCHEDULE, EVEN IF VERIZON HAS ACCEPTED YOUR ORDER FOR DSL SERVICE. THE PROVISIONING OF SERVICE IS SUBJECT TO NETWORK AVAILABILITY, CIRCUIT AVAILABILITY AND OTHER FACTORS, INCLUDING WITHOUT LIMITATION, LOOP LENGTH, THE CONDITION OF YOUR TELEPHONE LINE AND WIRING INSIDE YOUR LOCATION, AND YOUR COMPUTER/DEVICE CONFIGURATION AND CAPABILITIES, AMONG OTHER FACTORS. IN THE EVENT YOUR LINE IS NOT PROVISIONED FOR ANY REASON, NEITHER YOU NOR VERIZON SHALL HAVE ANY DUTIES OR OBLIGATIONS UNDER THIS AGREEMENT (OTHER THAN YOUR OBLIGATION TO RETURN ANY VERIZON-PROVIDED EQUIPMENT, PURSUANT TO PARAGRAPH 12 ABOVE).
- 16.3 VERIZON DOES NOT WARRANT THAT THE SERVICE OR EQUIPMENT PROVIDED BY VERIZON WILL PERFORM AT A PARTICULAR SPEED, BANDWIDTH OR DATA THROUGHPUT RATE, OR WILL BE UNINTERRUPTED, ERROR-FREE, SECURE, OR FREE OF VIRUSES, WORMS, OR THE LIKE. VERIZON SHALL NOT BE LIABLE FOR LOSS OF YOUR DATA, OR IF CHANGES IN OPERATION, PROCEDURES, OR SERVICES REQUIRE MODIFICATION OR ALTERATION OF YOUR EQUIPMENT, RENDER THE SAME OBSOLETE OR OTHERWISE AFFECT ITS PERFORMANCE. VERIZON MAKES NO WARRANTY REGARDING ANY TRANSACTIONS EXECUTED USING THE SERVICE OR THE INTERNET. VERIZON MAKES NO WARRANTY REGARDING THE CONTENT AND INFORMATION ACCESSED BY USING THE SERVICE OR ANY LINKS DISPLAYED. YOU EXPRESSLY ASSUME ALL RISK AND RESPONSIBILITY FOR USE OF THE SERVICE AND THE INTERNET GENERALLY. DO NOT USE THE SERVICE IN ANY HIGH RISK ACTIVITIES WHERE DAMAGE OR INJURY TO PERSON, PROPERTY, ENVIRONMENT, OR BUSINESS MAY RESULT IF AN ERROR OCCURS.
- 16.4 IN NO EVENT SHALL VERIZON (OR ITS OFFICERS, EMPLOYEES, PARENT, SUBSIDIARIES, OR AFFILIATES), ITS THIRD PARTY LICENSORS, PROVIDERS OR SUPPLIERS, INCLUDING GSPs, BE LIABLE FOR: (A) ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR LOSS OF REVENUE OR DAMAGE TO DATA ARISING OUT OF THE USE, PARTIAL USE OR INABILITY TO USE THE SERVICE, REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION, INCLUDING WITHOUT LIMITATION, THOSE ARISING UNDER CONTRACT, TORT, NEGLIGENCE OR STRICT LIABILITY, EVEN IF VERIZON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM OR DAMAGES, OR (B) ANY CLAIMS AGAINST YOU BY ANY OTHER PARTY.
- 16.5 ALL LIMITATIONS AND DISCLAIMERS STATED IN THIS PARAGRAPH 16 ALSO APPLY TO VERIZON'S THIRD PARTY LICENSORS, PROVIDERS AND SUPPLIERS, INCLUDING GSPs, AS THIRD PARTY BENEFICIARIES OF THIS AGREEMENT.
- 16.6 ANY RIGHTS OR LIMITS STATED HEREIN ARE THE MAXIMUM FOR WHICH VERIZON (AND ITS OFFICERS, EMPLOYEES, PARENT, SUBSIDIARIES, AND AFFILIATES), VERIZON'S THIRD PARTY LICENSORS, PROVIDERS AND SUPPLIERS, INCLUDING GSPs, ARE COLLECTIVELY RESPONSIBLE.

own risk, and is subject to all applicable local, state, national and international laws and regulations.

15.2 You agree that the Internet is not owned, operated or managed by, or in any way affiliated with Verizon and Verizon is not responsible and has no control over the information or materials accessible via the Internet through use of the Service. You further agree that Verizon does not own or control all of the various facilities and communications lines through which access may be provided, nor does Verizon guarantee access to or through websites, servers or other facilities on the Internet, whether or not such facilities are owned or controlled by Verizon. Verizon cannot and does not guarantee that the Service will provide Internet access that meets your needs.

15.3 You agree and acknowledge that through your use of the Service, you may have access to information, which may be sexually explicit, obscene or offensive, or otherwise unsuitable or objectionable, especially for children under the age of eighteen (18) years old. You agree to supervise usage of the Service by any minors who use your account to access the Service. Verizon is not responsible for access by any users, you, or minors, to objectionable or offensive information or data. VERIZON STRONGLY RECOMMENDS THE USE OF COMMERCIALY AVAILABLE CONTENT FILTERING SOFTWARE.

15.4 You agree that Verizon cannot and does not guarantee or warrant that data available for downloading through the Service will be free of defects, infection or viruses, worms, Trojan horses or other code that manifest contaminating, malicious or destructive properties. You are responsible for implementing adequate procedures to satisfy your particular requirements for accuracy of data input and output and for maintaining a means external to the Service for the reconstruction of any lost data.

15.5 You agree that the Internet is not a secure network and that third parties may be able to intercept, access, use, or corrupt the information you transmit or receive over the Internet. Verizon is not responsible for invalid destinations, transmission errors, or corruption or security of your data.

15.6 You are not authorized to use any Verizon name or mark as a hypertext link to any Verizon Web site or in any advertising, publicity or in any other commercial manner without the prior written consent of Verizon Licensing Company. You understand that your ability to link to a Web site through the Service does not, in any way, represent or imply Verizon's approval of, or its determination of the quality of that product or service, and that links are provided for your convenience only. The links provided through the Service are maintained by their respective organizations, which are solely responsible for their content.

16. WARRANTIES AND LIMITATION OF LIABILITY.

16.1 YOU ACKNOWLEDGE AND AGREE THAT THE SERVICE SUPPLIED HEREUNDER IS PROVIDED ON AN "AS IS" OR "AS AVAILABLE" BASIS, WITH ALL FAULTS. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT AND AS OTHERWISE SPECIFICALLY SET FORTH IN ANY MANUFACTURER WARRANTY FOR ANY EQUIPMENT PROVIDED BY VERIZON (BUT ONLY IF SUCH WARRANTY IS INCLUDED WITH SUCH EQUIPMENT), VERIZON (AND ITS OFFICERS, EMPLOYEES, PARENT, SUBSIDIARIES, AND AFFILIATES), ITS THIRD PARTY LICENSORS, PROVIDERS AND SUPPLIERS, INCLUDING GLOBAL SERVICE PROVIDERS ("GSPS"), DISCLAIM ANY AND ALL WARRANTIES FOR THE SERVICE, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR

16.7 THE REMEDIES EXPRESSLY SET FORTH IN THIS AGREEMENT ARE YOUR SOLE AND EXCLUSIVE REMEDIES. YOU MAY HAVE ADDITIONAL RIGHTS UNDER CERTAIN LAWS (SUCH AS CONSUMER LAWS), WHICH DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY, OUR EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU.

16.8 VERIZON RESERVES THE RIGHT TO PURSUE ANY AND ALL LEGAL AND EQUITABLE CLAIMS AGAINST YOU PERTAINING TO YOUR USE OR MISUSE OF THE SERVICE OR FOR YOUR BREACH OF THE AGREEMENT (INCLUDING ANY POLICIES RELATING TO THE SERVICE.)

17. **INDEMNIFICATION.** You agree to defend, indemnify and hold harmless Verizon from and against all liabilities, costs and expenses, including reasonable attorney's fees, related to or arising from: (a) any violation of applicable laws, regulations or this Agreement by you (or any parties who use your account, with or without your permission, to access the Service); (b) the use of the Service or the Internet or the placement or transmission of any message, information, software or other materials on the Internet by you (or any parties who use your account, with or without your permission, to access the Service); (c) negligent acts, errors, or omissions by you (or any parties who use your account, with or without your permission, to access the Service); (d) injuries to or death of any person and for damages to or loss of any property, which may in any way arise out of or result from or in connection with this Agreement, except to the extent that such liabilities arise from the active negligence or willful misconduct of the other party; or (e) claims for infringement of any intellectual property rights arising from the use of the Service, software, or the Internet.

18. NOTICES.

18.1 Notices required under this Agreement by you shall be provided to the Customer Service Department in accordance with the methods set forth under the Resource Center on the Website in the Contact Us Section. Notices by Verizon to you shall be deemed given: (a) when sent to your Verizon email address, or (b) when deposited in the United States mail addressed to you at last-known address or (c) when hand delivered to your home, as applicable. Notice of changes to this Agreement and these Terms of Service will be deemed given upon posting to the pages on the Website as set forth in Paragraph 6, Revisions, above.

18.2 With regard to electronic communications, you and Verizon further agree that: (a) the User ID and/or alias of a sender, contained in an electronic communication ("email"), is legally sufficient to verify the sender's identity and the authenticity of the communication; (b) an email sent containing your User ID and/or alias establishes you as its originator and has the same effect as a document with your written signature on it; and (c) an email or any computer printout of it, is a valid proof of the validity of the original content of the electronic communication.

19. GENERAL PROVISIONS

19.1 All obligations of the parties under this Agreement, which, by their nature, would continue beyond the termination, cancellation, or expiration of this Agreement, including by way of illustration and not limitation, those clauses relating to Software Licenses, Warranties and Limitation of Liability, and Indemnification, shall survive such termination, cancellation or expiration.

19.2 Verizon will not be liable for delays, damages or failures in performance due to causes beyond its reasonable control,

including, but not limited to, acts of a governmental body, acts of God, acts of third parties, fires, floods, strikes or other labor-related disputes, of other things we do not control, or an inability to obtain necessary equipment or services.

- 19.3 You agree not to assign or otherwise transfer, this Agreement in whole or in part, including the Software or your rights or obligations under it. Any attempt to do so shall be void. We may assign all or any part of this Agreement without notice and you agree to make all subsequent payments as directed.
- 19.4 You and Verizon agree that the substantive laws of the Commonwealth of Virginia, without reference to its principles of conflicts of laws, will be applied to govern, construe and enforce all of the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement. YOU AND VERIZON CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION OF AND VENUE IN A COURT LOCATED IN FAIRFAX COUNTY, VIRGINIA FOR ANY SUITS OR CAUSES OF ACTION CONNECTED IN ANY WAY, DIRECTLY OR INDIRECTLY, TO THE SUBJECT MATTER OF THIS AGREEMENT OR TO THE SERVICE. Except as otherwise required by law, including Virginia laws relating to consumer transactions, any cause of action or claim you may have with respect to the Service must be commenced within one (1) year after the claim or cause of action arises or such claim or cause of action is barred.
- 19.5 Use, duplication or disclosure by any Government entity is subject to restrictions set forth, as applicable, in subparagraphs (a) through (d) of the Commercial Computer-Restricted Rights clause at FAR 52.227-19, FAR 12.212, DFARS 227.7202, or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause of DFARS 252.227-7013, and in similar clauses in the NASA FAR Supplement. Contractor/manufacturer is Verizon or its licensors and suppliers. The use of Software and documentation is further restricted in accordance with the terms of this Agreement.
- 19.6 In the event of a conflict between this Agreement and any applicable tariff, the tariff shall prevail. We reserve the right to modify the Service to reflect any change in any applicable tariff or underlying network service or component affecting the Service.
- 19.7 Verizon's failure at any time to insist upon strict compliance with any of the provisions of this Agreement in any instance shall not be construed to be a waiver of such terms in the future. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the unenforceable portion shall be construed as nearly as possible to reflect the original intentions of the parties.
- 19.8 This Agreement, including all Attachments and all other policies posted on the Website, which are fully incorporated into this Agreement either by attachment or by reference, constitutes the entire agreement between you and Verizon with respect to the subject matter hereto and supersedes any and all prior or contemporaneous agreements whether written or oral. Any changes by you to this Agreement, or any additional or different terms in your purchase orders, acknowledgements or other documents, written or electronic, are void.

ATTACHMENT A

ACCEPTABLE USE POLICY

1. This is Verizon's policy on the acceptable use of the Service. It is designed to help protect the Service, Verizon's customers

impersonate any Verizon employee or official or other person or use a false name while using the Service or implying an association with Verizon; (x) to install "auto-responders," "cancel-bots" or similar automated or manual routines which generate excessive amounts of net traffic, or disrupt net user groups or email use by others; (y) to make false or unverified complaints against any Verizon subscriber, or otherwise abusing any of Verizon's complaint response procedures; (z) to use software or any other device that would allow your account to stay logged on while you are not actively using the Service, unless you are a Broadband customer; (aa) to export software or any information in violation of US export laws; (bb) to use the Service in contravention of the limitations of the pricing plan you have chosen; (cc) for Broadband customers who use static IP address, to use an IP address other than the one assigned by Verizon; (dd) for customer who have been assigned a dynamic IP address to use such IP address to circumvent the changing of IP addresses assigned by the Service or (ee) to open connections to more than one Verizon Usenet news service at a time.

Usenet Policy and Posting Restrictions: Usenet comprises a system of bulletin boards called newsgroups. Usenet access is provided to Internet access customers of Verizon through the Verizon network. Verizon Usenet may not be accessed via any other network. You may open no more than five simultaneous connections to newsgroups at any one time. You may not rapidly open and close or create connections for users other than yourself (our Subscriber). Verizon will carry newsgroups at their sole discretion. Requests to add a newsgroup, from any source, will be evaluated on a case-by-case basis, and added at Verizon sole discretion. You must familiarize yourself with the subjects and established guidelines and restrictions of any newsgroup in which you participate and we reserve the right, in our sole discretion to terminate your Service in the event you violate newsgroup guidelines or restrictions.

4. **Copyright Infringement/Repeat Infringer Policy.** Verizon respects the intellectual property rights of third parties, including those granted under the US copyright laws, and the interests of its subscribers and content providers on the Internet. You may not store material of any type or in any format on, or disseminate such material over, Verizon's systems or servers in any manner that constitutes an infringement of third party intellectual property rights, including rights granted under the US copyright laws. In accordance with the Digital Millennium Copyright Act (DMCA) and other applicable law, it is the policy of Verizon to terminate, in appropriate circumstances, the Service provided to any subscriber or account holder who is deemed to infringe third party intellectual property rights, including repeat infringers. Appropriate circumstances may exist where (i) a Subscriber or account holder has been found by a court of competent jurisdiction to have infringed the copyrights of a third party on two or more occasions, i.e., a repeat infringer, (ii) Subscriber or account holder has entered into an agreement acknowledging wrongdoing to settle a claim of copyright infringement and subsequently uses Verizon's service to violate the terms of that agreement by engaging in copyright infringement or to otherwise engage in conduct that is found by a court of competent jurisdiction to constitute copyright infringement, (iii) where a valid, effective and uncontested notice has been provided to Verizon alleging facts which are a violation by the Subscriber or account holder of Verizon's Copyright Policy prohibiting infringing activity involving Verizon systems or servers, or (iv) in other cases of repeated flagrant abuse of access to the Internet (e.g., willful commercial piracy or malicious attempts to destroy the value of copyrighted works). In addition, Verizon expressly reserves the right to terminate or suspend the Service of any Subscriber or account holder if Verizon, in its sole judgment, believes that circumstances relating to the

and the Internet community, from irresponsible or illegal activities.

2. Verizon reserves the right to deny Service to you, or immediately to terminate your Service for material breach, if your use of the Service or your use of an alias or the aliases of additional users on your account, whether explicitly or implicitly, and in the sole discretion of Verizon: (a) is obscene, indecent, pornographic, sadistic, cruel or racist in nature, or of a sexually explicit or graphic nature; (b) espouses, promotes or incites bigotry, hatred or racism; (c) might be legally actionable for any reason, (d) is objectionable for any reason, or (e) in any manner violates the terms of this Acceptable Use Policy.
3. You may NOT use the Service as follows: (a) for any unlawful, improper or illegal purpose or activity; (b) to post or transmit information or communications that, whether explicitly stated, implied, or suggested through use of symbols, are obscene, indecent, pornographic, sadistic, cruel, or racist in content, or of a sexually explicit or graphic nature; or which espouses, promotes or incites bigotry, hatred or racism; or which might be legally actionable for any reason; (c) to access or attempt to access the accounts of others, to spoof or attempt to spoof the URL or DNS or IP addresses of Verizon or any other entity, or to attempt to penetrate or penetrate security measures of Verizon or other entities' systems ("hacking") whether or not the intrusion results in corruption or loss of data; (d) to bombard individuals or newsgroups with uninvited communications, data or information, or other similar activities, including but not limited to "spamming", "flaming" or denial or distributed denial of service attacks; (e) to transmit unsolicited voluminous emails (for example, spamming) or to intercept, interfere with or redirect email intended for third parties using the Service; (f) to introduce viruses, worms, harmful code and/or Trojan horses on the Internet; (g) to post information on newsgroups which is not in the topic area or charter (e.g. off-topic posting) of the newsgroup; (h) to interfere with another person's usage or enjoyment of the Internet or this Service; (i) to post or transmit information or communications that are defamatory, fraudulent, obscene or deceptive, including but not limited to scams such as "make-money-fast" schemes or "pyramid/chain" letters; (j) to damage the name or reputation of Verizon, its parent, affiliates and subsidiaries, or any third parties; (k) to transmit confidential or proprietary information, except solely at your own risk; (l) to violate Verizon's or any third party's copyright, trademark, proprietary or other intellectual property rights, including trade secret rights; (m) to use more than one IP address obtained from Verizon; (n) to generate excessive amounts (as determined by Verizon in its sole discretion) of Internet traffic, or to disrupt net user groups or email use by others; (o) to engage in activities designed to or having the effect of degrading or denying Service to Verizon users or others (including activities that compromise a server, router, circuit, software or other Internet component); (p) to use any name or mark of Verizon, its parent, affiliates or subsidiaries, as a hypertext link to any Web site or in any advertising publicity or other commercial manner; (q) to use the Service to operate a server in a manner that interferes with the network or other users' use of the Service; (r) to use the Service or the Internet in a manner intended to threaten, harass, or intimidate; (s) to cause the screen to "scroll" faster than other subscribers or users are able to type to it, or any action that has a similar disruptive effect, on or through the Service; (t) to use the Service to disrupt the normal flow of online dialogue, (u) to use the Service to violate any operating rule, policy or guideline of any other online services provider or interactive service; (v) to attempt to subvert or to aid third parties to subvert, the security of any computer facility or system connected to the Internet; (w) to

infringement of third party intellectual property rights warrant such action. These policies are in addition to and do not affect or modify any other rights Verizon may have under law or contract. If you believe that copyrighted material has been used in violation of this policy or otherwise been made available on the Service in a manner that is not authorized by the copyright owner, its agent or the law, please follow the instructions for contacting Verizon's designated Copyright Agent as set forth in Verizon's Copyright Policy located at <http://www.verizon.com/copy.html>.

5. You shall comply with all applicable local, state, national and international laws and regulations, including those related to data privacy, international communications, and exportation or technical or personal data. You represent that you are not a specifically designated individual or entity under any US embargo or otherwise the subject, either directly or indirectly (by affiliation, or any other connection with another party) to any order issued by any agency of the US Government limiting, barring, revoking or denying, in whole or in part your US export privileges. You agree to notify Verizon if you become subject to any such order.
6. You shall not delete any proprietary designations, legal notices or other identifiers belonging to third parties from any information obtained or sent using the Service and shall not impersonate any person or use a false name while using the Service. You agree to obtain all required permissions if you use the Service to receive, upload, download, display, distribute, or execute Software or perform other works protected by intellectual property laws including copyright, trademark, trade secret and patent laws. You agree to cooperate with Verizon and provide requested information in connection with all security and use matters. You agree to notify Verizon promptly if you suspect unauthorized use of the Service or of your UserID. You remain liable for unauthorized use until your notification to Verizon at security@verizon.net. You agree that your name, UserID, and other identifying information may be placed in our user directory.
7. Verizon reserves the right to cooperate with legal authorities and/or injured third parties in the investigation of any suspected crime or civil wrong. Such cooperation may include, but not be limited to, provision of account or user information or email as well as monitoring of the Verizon network.
8. Verizon may, but is not required to monitor your compliance, or the compliance of other subscribers, with the terms, conditions or policies of this Agreement.

V-W5.21

Exhibit A

Dial-up Services in New Jersey provided by Verizon Online — New Jersey LLC.

Dial-up Services in Maryland provided by Verizon Online — Maryland LLC.

Services in Pennsylvania are provided by Verizon Online Pennsylvania Partnership.

Exhibit 3



VERIZON INTERNET ACCESS SERVICE TERMS OF SERVICE

Welcome to Verizon!

THESE TERMS AND CONDITIONS STATE IMPORTANT REQUIREMENTS REGARDING YOUR USE OF VERIZON'S INTERNET ACCESS SERVICE AND YOUR RELATIONSHIP WITH VERIZON.

YOU SHOULD READ THEM CAREFULLY AS THEY CONTAIN IMPORTANT INFORMATION REGARDING YOUR RIGHTS AND OURS.

IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, YOU MAY NOT USE THE SERVICE AND YOU MUST TERMINATE YOUR SERVICE IMMEDIATELY.

1. These Terms of Service (the "Agreement") are entered into by and between the subscriber ("you", "your" or "Subscriber") and Verizon Internet Services Inc. or its affiliates as defined in Exhibit A of this Agreement ("Verizon", "us" or "we"). The Agreement sets forth the terms and conditions under which you agree to use the Service, and under which Verizon agrees to provide the Service to you.

Acceptance of this Agreement. You are deemed to have accepted this Agreement upon the earlier of: (a) your submission of an online order; (b) your accepting the Terms of Service electronically during registration or in the course of installing the Software (see Paragraph 4) or the Equipment (see Paragraph 2); (c) your use of the Service (see Paragraph 2); or (d) your retention of the Software or Equipment we provide beyond 30 days following delivery.

This Agreement is made up of the terms below, plus the Acceptable Use Policy, Privacy Policy, all Attachments to this Agreement, and the other policies and materials specifically referred to in these Terms of Service, all of which are incorporated herein by reference. The Agreement and related policies are also set forth on the Verizon website

3.4 If you select a pricing plan that includes a predetermined allocation of Services (for example, 150 hours of Dial-up Service), unused allotment of Services from one billing cycle will not carry over to any other billing cycle.

- 3.5 If you subscribe to Dial-up Service:

- A. You may not resell the Dial-up Service, use it for high volume purposes, or engage in similar activities that constitute such use (commercial or non-commercial), or use it as a dedicated line, as determined solely by Verizon. If your account is idle for fifteen minutes, it will be subject to log-off automatically and without notice. An account session may be deemed to be idle if there appears to be no interactive, human generated data received from the remote user's computer system within a prescribed amount of time. Automated data is not considered interactive or human generated. Automated data includes but is not limited to data generated by an automatic redialer, script or other program that runs on a computer system for the purpose of avoiding inactivity disconnects, and the automated checking of email or "pinging" the host to maintain a constant connection.

- B. You may only use your account for one log-on session per connection type at a time. You may not use more than one IP address for each log-on session.

- C. You may not use the Dial-up Service to host any type of server, personal or commercial in nature.

- 3.6 If you subscribe to Broadband Service:

- A. You may not resell the Broadband Service, use it for high volume purposes, or engage in similar activities that constitute resale (commercial or non-commercial), as determined solely by Verizon.

- B. You may connect multiple computers/devices within a single home or office location to your Broadband modem and/or router to access the Service, but only through a single Broadband account and a single IP address obtained from Verizon.

- C. Where available, Broadband customers may use their Broadband accounts to connect through an analog connection, but these connections will be subject to usage thresholds and additional per hour and monthly charges, depending on the Service to which you subscribed.

- D. Additional User IDs provided for Broadband customers' email boxes are not intended for use as dial-up connections. Any usage associated with additional email box User IDs will be charged the per hour rate associated with usage above the monthly allotment for analog Dial-up Service (where available). The number of mailboxes available to you depends upon the Service to which you have subscribed.

- E. You may not use the Broadband Service to host any type of server personal or commercial in nature.

- 3.7 Verizon reserves the right to audit connections electronically to enforce these or any other provision of the Agreement.

4. **PRIVACY POLICY.** Verizon will treat your personal information in accordance with its current Privacy Policy, subject to change from time to time, which is posted on the Website under the Policies Section of the Resource Center. You agree to the terms of the Privacy Policy, which describes Verizon's use and disclosure of information about your account and your use of the Service.

5. **ACCEPTABLE USE POLICY.** You agree to comply with the terms of the Acceptable Use Policy, which is attached hereto as Attachment A and which also may be found posted on the Website under the Policies Section of the Resource Center.

related policies are also set forth on the Verizon website (<http://www2.verizon.net/policies/>) (the "Website") and can be found under the Policies Section of the Resource Center. You may also receive a paper copy of this Agreement either by telephoning Verizon at 1-800 567-6789 or by writing to us at Verizon, 400 Foxcroft Avenue, Martinsburg, WV 25401, Attention: Customer Service.

2. **DEFINITION OF SERVICE.** For purposes of this Agreement, the term "Service" shall mean the Verizon Internet access service, including all Software (as defined in Paragraph 9 below), Equipment, technical support, Usenet and newsgroup services, email and other features, products and services provided by Verizon under the pricing plan that you have selected. The Service does not include voice telephony services over the public switched telephone network. For purposes of this Agreement, "Equipment" shall mean the modem, router and/or other equipment provided by Verizon for use with your Service. The Service may be referred to as, "Verizon Fios Internet Service", "DSL Service", "Verizon Online DSL", "Verizon DSL", "Dial-up Service" or "Verizon Online Dial-up". Verizon Fios Internet Service and DSL are collectively referred to as "Broadband Services."

3. **AUTHORIZED USER, USE, AND RESPONSIBILITIES.**

3.1 You acknowledge that you are 18 years of age or older, and you agree that you have the legal authority to enter into this Agreement and affirm that the information you supply to us is correct and complete. You understand that Verizon relies on the information you supply and that providing false or incorrect information may result in Service provisioning or delivery delays or the suspension or termination of your Service. You agree to promptly notify Verizon whenever your personal or billing information changes (including for example, your name, address, telephone number, and credit card number and expiration date).

3.2 We will provide you with or, if available in your area for your chosen Service, you will choose, a User ID and/or Verizon User Name (collectively, "User ID") and password for each account purchased to enable you to access the Service. You agree to protect your User ID and to pay for all activity associated with it.

3.3 You agree that you are responsible for all use on your account, including any secondary accounts or sub-accounts registered to your primary account. You understand this means that you accept full liability and responsibility for the actions of anyone who uses the Service via your account, or any secondary accounts, with or without your permission. You also agree to use the Service only within the United States.

Website under the Policies Section of the Resource Center.

6. **REVISIONS.** We may revise the terms and conditions of this Agreement from time to time (including any of the policies which may be applicable to usage of the Service) by posting such revisions to the Website at the Resource Center under Announcements. You agree to visit these pages periodically to be aware of and review any such revisions. Increases to the monthly price of the Service (excluding other charges as detailed in §13.1(a)-(d)) shall be effective thirty (30) days after posting; revisions to any other terms and conditions shall be effective upon posting. By continuing to use the Service after revisions are in effect, you accept and agree to the revisions and to abide by them. If you do not agree to the revision(s), you must terminate your Service immediately.

7. **ALIASES.** Verizon will issue email aliases (alternate email addresses) based upon availability of the alias selected. If you surrender your alias by changing it, or if your account is terminated for any reason, Verizon will not reserve that alias for you or receive or forward emails addressed to that alias.

8. **AVAILABILITY OF SERVICE.**

8.1 The Service you select may not be available in all areas, may not be available at the rates, speeds, or bandwidth generally marketed, and some telephone lines may not qualify for the Service even if initial testing showed that your line was qualified. For DSL Subscribers, we will provision your qualified line for DSL at the maximum line rate available to your location based on our standard line qualification procedures, unless you have selected a level of service with a lower maximum line rate. All Services are provided on an AS IS basis and throughput speeds, line rate access to Usenet newsgroups and availability of your Service are not guaranteed (see Paragraph 16.) Verizon reserves the right to limit Usenet download speeds.

8.2 Verizon or its suppliers may, at any time, without notice or liability, restrict the use of the Service or limit its time of availability in order to perform maintenance activities and to maintain session control.

8.3 Broadband Services utilizes transport service provided by your local Verizon telephone company. If you change your local telephone company, or move your local telephone service to a wireless service provider we may in our discretion either terminate your account or continue to provide Broadband service at existing rates terms and conditions. If your local Verizon telephone company provisions transport service to your location utilizing fiber optic technologies, we may in our discretion terminate your DSL Service. In cases of such termination, we will offer to you Verizon Fios Internet Service and we will disclose to you applicable rates and additional terms, if any, that may differ from the DSL Services provided under this Agreement.

9. **SOFTWARE LICENSES AND THIRD PARTY SERVICES.**

9.1 In connection with our provision of the Service, we may provide to you, via download, CD, other media, or other delivery method, the use of certain software which is owned by Verizon or its third party licensors, providers and suppliers, and which may be provided free or for a fee, including client and/or network security software ("Software"). We reserve the right to update or change the Software from time to time and you agree to cooperate in performing such steps as may be necessary to install any updates or upgrades to the Software. You may use the Software only as part of or for use with the Service and for no other purpose.

9.2 The Software may be accompanied by an end user license

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Version: 0205
Part #: DSL1YRAGR



agreement from Verizon or a third party. Your use of the Software is governed by the terms of the license agreement and by this Agreement, where applicable. You may not install or use any Software that is accompanied by or includes an end user license agreement unless you first agree to the terms and conditions of the end user license agreement.

- 9.3 With regard to any Software which is not accompanied by an end user license agreement, you are hereby granted a revocable, non-exclusive, non-transferable license by Verizon or its third party licensors, providers or suppliers, to use the Software (and any corrections, updates and upgrades). You may not make any copies of the Software. You agree that the Software is the confidential information of Verizon or its third party licensors, providers or suppliers, which you shall not disclose to others or use except as expressly permitted herein. The Software contains copyrighted material, trade secrets, patents, and proprietary information owned by Verizon or its third party licensors, providers, or suppliers. You may not de-compile, reverse engineer, disassemble, attempt to discover any source code or underlying ideas or algorithms of the Software, otherwise reduce the Software to a human readable form, modify, rent, lease, loan, use for timesharing or service bureau purposes, reproduce, sublicense or distribute copies of the Software, or otherwise transfer the Software to any third party. You may not remove or alter any trademark, trade name, copyright or other proprietary notices, legends, symbols, or labels appearing on or in copies of the Software. You are not granted any title or rights of ownership in the Software. You acknowledge that this license is not a sale of intellectual property and that Verizon or its third party licensors, providers or suppliers continue to own all right, title and interest, including but not limited to all copyright, patent, trademark, trade secret, and moral rights, to the Software and related documentation, as well as any corrections, updates and upgrades. The Software may be used in the United States only, and any export of the Software is strictly prohibited.
- 9.4 We provide technical assistance and support for the Software in accordance with our policies. Unless otherwise provided in such policies, Verizon does not provide technical assistance or support for any third party Software. Technical assistance or support with regard to third party software provided by the Software supplier is solely provided in accordance with such third party's policies or other terms.
- 9.5. Your license to use the Software shall remain in full force and effect unless and until terminated by Verizon, its third party licensors, providers or suppliers, or until your Service is terminated. Upon termination of your Service for any reason, you must cease all use of the Software and immediately delete the Software from your computer.
- 9.6 **Other Third Party Agreements:** If you subscribe to or otherwise use any third party services offered by or through Verizon, your use of any such services is subject to the terms of services of such third party service provider. You agree to comply with such provider's terms of service and that the third party provider is solely responsible for delivery of its service(s) to you and your use of them. Third party services include, but are not limited to, portal, music, gaming, storage and photography services that Verizon may elect to make available from time to time. Violation of such third party provider's terms of service may, in Verizon's sole discretion, result in the termination of your Service.

10. PERSONAL WEB SPACE AND STORAGE.

Personal Web Space ("PWS") may be made available to you as an optional feature of the Service. Additional terms and conditions applicable to PWS, including pricing if applicable, are posted on the Website at My Web Space. In the event of a breach by you of this Agreement or the terms and conditions applicable to PWS, Verizon reserves the right

to terminate this Agreement without notice by giving notice to the other party in accordance with the notice provision set forth at Paragraph 18 below. Termination by you will be effective upon your notice to Verizon. Activation or set-up fees paid at the initiation of your Broadband Service, if any, are not refundable, except during the thirty (30) day money-back guarantee period. Additionally, if you terminate this Agreement prior to the end of the first year of service and you received Equipment at no charge from Verizon, you will be required to return the Equipment to Verizon; failure to do so will result in an additional equipment charge. We will provide you with a pre-paid mailing label and instructions for the return of your Equipment. Termination by Verizon shall be effective thirty (30) days after the date of notice to you, except as otherwise provided in this Agreement. In the event of termination by Verizon, for any reason, you will be required to pay the remaining balance of the charges applicable to your Service through the effective date of termination.

- 12.3.2 **Broadband Subscribers with Annual Service Contracts-Termination Fee.** The term for Broadband Service customers with an annual service commitment is for twelve (12) consecutive months beginning on: (a) the date you change your existing Broadband Service plan to an annual Service contract; or (b) the Service Ready Date, whichever is later, and continuing thereafter on a month-to-month basis until terminated by either party as permitted by this Agreement. IN THE EVENT THAT YOU TERMINATE YOUR BROADBAND SERVICE BEFORE COMPLETING TWELVE (12) MONTHS OF SERVICE UNDER YOUR ANNUAL PLAN, THEN YOU AGREE TO PAY VERIZON UPON DISCONTINUANCE OF THE SERVICE A TERMINATION FEE IN THE AMOUNT AS SET FORTH IN THE PRICING PLAN YOU HAVE CHOSEN (THE "EARLY TERMINATION FEE"). In addition to any applicable Early Termination Fees, you will be required to pay the remaining balance of the charges applicable to your Service through the effective date of termination. After the end of your Initial Term agreement with us, you may be given the option to enter into a new annual contract for a new one-year term subject to the terms and conditions for the annual plan, if any, in effect at that time. If you do not elect to enter into a new annual plan, your Service will automatically convert to a month-to-month plan at the then-effective monthly fee. Broadband customers with a twelve (12) month service commitment who move to a new location can sign up for a new annual plan at the new location if the Service and an annual plan are available. Existing annual plans cannot be carried over to a new Service location.
- 12.3.3 **Termination and/or Suspension by Verizon.** If, in the sole discretion of Verizon: (a) you are in breach of any of the terms of this Agreement (including but not limited to) all policies regarding abuse and acceptable use of the Service); (b) your use of the Service is prohibited by law or is disruptive to, adversely impacts or causes a malfunction to the Service, Verizon's network, or the use and enjoyment of other users; or (c) Verizon receives an order from a court to terminate your Service; (d) if Verizon for any reason ceases to offer the Service; or (e) if you are no longer a Verizon local telephone subscriber as set for in Paragraph 8.3, then Verizon at its sole election may terminate or suspend your Service immediately without notice. For termination in accordance with this Paragraph 12.3.3, you shall be liable for the applicable fees and/or Equipment charges set forth in Paragraphs 12.2, 12.3.1, or 12.3.2 (depending on which fees or charges are applicable).

- 12.4 **Terminated Account.** Verizon, in its sole discretion, may refuse to accept your application for Service following a termination or suspension of your use of the Service. If your Service is terminated for any reason, you agree to pay a reconnection fee if the Service is reactivated.

- 12.5 **Regulatory Compliance.** In the event there is a ruling,

conditions applicable to PWS, Verizon reserves the right to immediately terminate your PWS without notice. Verizon reserves the right to delete all data, files, and other information stored on or for your PWS upon termination of your Service for any reason. You understand that we do not provide telephone technical support for PWS.

in the event there is a ruling, regulation or order issued by a judicial, legislative or regulatory body that causes Verizon to believe that this Agreement may be in conflict with such rules, regulations, and orders, Verizon may terminate or modify your Service and/or this Agreement immediately without notice.

11. EMAIL AND EMAIL MESSAGING SERVICE.

11.1 **EMAIL SERVICE.** Use of Verizon email service is subject to Verizon's email and anti-spam policies, including limitations on the number and/or size of email messages that may be sent during a given time period, or the number of recipients of a particular email.

11.2 **EMAIL MESSAGING SERVICE.** Email Messaging Service ("EMS") may be made available to you as an optional feature of certain Broadband packages if you have your own domain name. Additional terms and conditions applicable to EMS, including pricing if applicable, are posted in the My Account page on the Website under the Verizon E-Mail Tools Section. In the event of a breach by you of the terms and conditions applicable to EMS, Verizon reserves the right to terminate your EMS immediately without notice. Verizon also reserves the right to delete all data, files, and other information stored on or for your EMS upon termination of your Service for any reason.

12. TERM AND TERMINATION.

12.1 **Effective Date and Term.** This Agreement goes into effect upon your acceptance of this Agreement as set forth in Paragraph 1 and shall continue, subject to the terms of this Paragraph 12, until terminated by either party as permitted by this Agreement. Billing for your Dial-up Service will automatically begin upon registration of your account. Billing for your Broadband Service will automatically begin on the date provisioning of your Broadband Service is complete and ready for use ("Service Ready Date").

12.2 **Money Back Guarantee.** Verizon provides a thirty (30) day money back guarantee as follows:

A. For Broadband Service Subscribers, your thirty (30) day money-back guarantee begins upon your Service Ready Date. During this thirty (30) day period you may cancel the Broadband Service and receive a full refund of all monthly charges paid as well as any one-time charges and equipment charges paid to Verizon (provided you return all Equipment in good working condition). If you cancel your Broadband Service prior to your Service Ready Date or within the thirty (30) day money-back guarantee period, you will be required to return to Verizon any Equipment provided to you by Verizon; Verizon will provide you with a pre-paid mailing label and instructions for the return of your Equipment. In the event you fail to return the Equipment, an additional charge for the unreturned Equipment will apply. Early termination fees shall not apply to Service terminated within the thirty (30) day money-back guarantee period. The thirty (30) day money-back guarantee does not apply to customers who change between monthly, annual, bundle or other pricing plans.

B. For Dial-up Service Subscribers, your thirty (30) day money-back guarantee begins upon registration. During this thirty (30) day period you may cancel the Dial-up Service and receive a full refund of all monthly charges paid as well as any one-time charges paid to Verizon.

12.3 Termination of Service.

12.3.1 **Broadband or Dial-up Subscribers with Month-to-Month Accounts.** If you are a month-to-month Broadband Service or Dial Up Service customer, either you or Verizon may

12.6 **Deletion of Data upon Termination.** You agree that if your Service is terminated for any reason, Verizon has the right to immediately delete all data, files, and other information stored in or for your account without further notice to you.

13. PRICING AND PAYMENT.

13.1 **Prices and Fees.** Verizon fees and charges for the Service(s) you select are supplied to you during the ordering process unless otherwise provided for in this Agreement. You agree to pay the charges applicable to your selected Service plan. You also agree to pay all other charges, including but not limited to a) applicable taxes, b) surcharges, c) recovery fees, d) telephone charges, e) activation fees, f) installation fees, g) set-up fees, h) equipment charges, i) termination fees, and j) other nonrecurring charges. The taxes, fees and other charges detailed in this section a)-d) may vary on a monthly basis; any variations will be reflected in your monthly charge. You also agree to pay any additional charges or fees applied to your billing account for any reason, including but not limited to, interest, and charges due to insufficient credit or insufficient funds. Set up fees, activation fees, installation fees, other non-recurring fees, and equipment charges, if applicable, will be included in your first month's bill. Monthly recurring charges will be billed one month in advance; usage charges will be billed in arrears, if applicable. Verizon or its agent will bill you directly, or bill your credit card or your local Verizon telephone bill (telephone billing available in selected areas only), as you request and as approved by Verizon. Verizon does not accept debit cards for payment of any charges or fees. IF YOU ELECT TO BE BILLED ON YOUR VERIZON PHONE BILL, BY USING THE SERVICES YOU AGREE TO HAVE VERIZON CHARGES INCLUDED ON YOUR PHONE BILL.

13.2 **Discontinuation of Service for Nonpayment.** Service to you may be denied or discontinued without notice at any time in the event the placement of Service charges on your telephone bill is refused for any reason, or your credit card provider denies or discontinues providing credit to you for any reason, or you fail to make payment when due or provide us with a new credit card expiration date before the existing one expires.

13.3 **Late Fees.** If any portion of your bill is not paid by the due date, Verizon may charge you a late fee on unpaid balances and may also terminate or suspend your Service without notice. The late fee will be the lesser of one and one-half percent (1.5 %) per month, or the highest rate permitted by law. In the event Verizon utilizes a collection agency or resorts to legal action to recover monies due, you agree to reimburse us for all expenses incurred to recover such monies, including attorneys' fees.

13.4 **Local telephone, Toll and Long Distance Charges.** Whether you are accessing the Service from your home or away from your home, you are responsible for all telephone charges, and Verizon does not guarantee or warrant that any dial-up access numbers provided will be a local call from your location. VERIZON IS NOT RESPONSIBLE FOR ANY CHARGES, INCLUDING BUT NOT LIMITED TO, LONG DISTANCE AND METERED LOCAL OR TOLL CHARGES INCURRED WHEN YOU ACCESS THE SERVICE. YOU SHOULD CHECK WITH THE LOCAL PHONE COMPANY TO DETERMINE WHETHER A DIAL-UP NUMBER YOU HAVE SELECTED IS A LOCAL CALL FROM YOUR LOCATION AND WHETHER ANY CHARGES APPLY. ADDITIONAL CHARGES, WHICH MAY BE

- 13.5 You are limited to taking advantage of no more than one special pricing promotion during any twelve-month period.
- 13.6 You have the option to change your Service(s) at any time by notifying us, provided that you qualify for and comply with any requirements of that Service.
- 13.7 The waiver of any fees or charges lies solely in the discretion of Verizon.

14. MANAGEMENT OF YOUR DATA AND COMPUTER.

14.1 **System Management and Service Performance.** You are solely responsible for obtaining, installing, configuring, and maintaining suitable equipment and software, including any necessary system or software upgrades, patches or other fixes, which are or may become necessary to access the Service and to operate your computer. You understand that bandwidth is provided on a per-line basis, and that the speed and bandwidth available to each computer or device connected to the network will vary depending upon the number, types and configuration of computers or devices using the Service and the type of use (e.g., streaming media or downloading larger files, etc.), network or Internet congestion, and/or the condition of your telephone line and the wiring inside your location, among other factors.

14.2 **Data Management and Responsibility.** You are responsible for management of your information, including but not limited to back-up and restoration of data (for example, address book and calendaring information), erasing data from disk space you control and changing data on or settings for your modem and/or router. Verizon is not responsible for the loss of your data or for the back-up or restoration of your data regardless of whether this data is maintained on our servers or your computer or server.

14.3 **Your Security.** You are responsible for development and maintenance of any security procedures you deem appropriate, such as logon security and encryption of data, User ID, alias, and password on your modem and/or router and firewalls, to protect your information. We are not responsible in the event that any party changes the information on your account, including without limitation, your alias, User ID, password, or security information. We are not responsible for backup and restoration of your information. WE STRONGLY RECOMMEND THE USE (AND APPROPRIATE UPDATING) OF COMMERCIAL ANTI-VIRUS AND FIREWALL SOFTWARE.

14.4 **Verizon Network.** For the purposes of backup and maintenance, we may use, copy, display, store, transmit, translate, rearrange, reformat, view and distribute your information to multiple Verizon servers. We do not guarantee that these procedures will prevent the loss of, alteration of, or the improper access to, your information.

14.5 **Monitor of Network Performance.** Verizon automatically measures and monitors network performance and the performance of your Internet connection and our network as part of this process. We also will access and record information about your computer's profile and settings and the installation of software we provide in order to provide customized technical support and you agree to permit us to access and record such data for the purposes described in this Agreement. No adjustments to your computer settings will be made without your permission. We do not share information collected for the purpose of network or computer performance monitoring or for providing customized technical support outside of Verizon or its authorized vendors, contractors and agents. You hereby consent to Verizon's monitoring of your Internet connection and network performance, and the access to and adjustment of your computer settings, as set forth

INCLUDES WITH SUCH EQUIPMENT, VERIZON (AND ITS OFFICERS, EMPLOYEES, PARENT, SUBSIDIARIES, AND AFFILIATES), ITS THIRD PARTY LICENSORS, PROVIDERS AND SUPPLIERS, INCLUDING GLOBAL SERVICE PROVIDERS (GSPS), DISCLAIM ANY AND ALL WARRANTIES FOR THE SERVICE, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, NON-INFRINGEMENT, NON-INTERFERENCE, TITLE, COMPATIBILITY OF COMPUTER SYSTEMS, INTEGRATION, AND THOSE ARISING FROM COURSE OF DEALING, COURSE OF TRADE, OR ARISING UNDER STATUTE. NO ADVICE OR INFORMATION GIVEN BY VERIZON OR ITS REPRESENTATIVES SHALL CREATE A WARRANTY. USE OF VERIZON TECHNICAL SUPPORT IS AT YOUR OWN RISK AND IS NOT WARRANTED.

16.2 VERIZON DOES NOT WARRANT OR GUARANTEE THAT SERVICE CAN BE PROVISIONED TO YOUR LOCATION, OR THAT PROVISIONING WILL OCCUR ACCORDING TO A SPECIFIED SCHEDULE, EVEN IF VERIZON HAS ACCEPTED YOUR ORDER FOR DSL SERVICE. THE PROVISIONING OF SERVICE IS SUBJECT TO NETWORK AVAILABILITY, CIRCUIT AVAILABILITY AND OTHER FACTORS, INCLUDING WITHOUT LIMITATION, LOOP LENGTH, THE CONDITION OF YOUR TELEPHONE LINE AND WIRING INSIDE YOUR LOCATION, AND YOUR COMPUTER/DEVICE CONFIGURATION AND CAPABILITIES, AMONG OTHER FACTORS. IN THE EVENT YOUR LINE IS NOT PROVISIONED FOR ANY REASON, NEITHER YOU NOR VERIZON SHALL HAVE ANY DUTIES OR OBLIGATIONS UNDER THIS AGREEMENT (OTHER THAN YOUR OBLIGATION TO RETURN ANY VERIZON-PROVIDED EQUIPMENT, PURSUANT TO PARAGRAPH 12 ABOVE).

16.3 VERIZON DOES NOT WARRANT THAT THE SERVICE OR EQUIPMENT PROVIDED BY VERIZON WILL PERFORM AT A PARTICULAR SPEED, BANDWIDTH OR DATA THROUGHPUT RATE, OR WILL BE UNINTERRUPTED, ERROR-FREE, SECURE, OR FREE OF VIRUSES, WORMS, OR THE LIKE. VERIZON SHALL NOT BE LIABLE FOR LOSS OF YOUR DATA, OR IF CHANGES IN OPERATION, PROCEDURES, OR SERVICES REQUIRE MODIFICATION OR ALTERATION OF YOUR EQUIPMENT, RENDER THE SAME OBSOLETE OR OTHERWISE AFFECT ITS PERFORMANCE. VERIZON MAKES NO WARRANTY REGARDING ANY TRANSACTIONS EXECUTED USING THE SERVICE OR THE INTERNET. VERIZON MAKES NO WARRANTY REGARDING THE CONTENT AND INFORMATION ACCESSED BY USING THE SERVICE OR ANY LINKS DISPLAYED. YOU EXPRESSLY ASSUME ALL RISK AND RESPONSIBILITY FOR USE OF THE SERVICE AND THE INTERNET GENERALLY. DO NOT USE THE SERVICE IN ANY HIGH RISK ACTIVITIES WHERE DAMAGE OR INJURY TO PERSON, PROPERTY, ENVIRONMENT, OR BUSINESS MAY RESULT IF AN ERROR OCCURS.

16.4 IN NO EVENT SHALL VERIZON (OR ITS OFFICERS, EMPLOYEES, PARENT, SUBSIDIARIES, OR AFFILIATES), ITS THIRD PARTY LICENSORS, PROVIDERS OR SUPPLIERS, INCLUDING GSPS, BE LIABLE FOR: (A) ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR LOSS OF REVENUE OR DAMAGE TO DATA ARISING OUT OF THE USE, PARTIAL USE OR INABILITY TO USE THE SERVICE, REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION, INCLUDING WITHOUT LIMITATION, THOSE ARISING UNDER CONTRACT, TORT, NEGLIGENCE OR STRICT LIABILITY, EVEN IF VERIZON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM OR DAMAGES, OR (B) ANY CLAIMS AGAINST YOU BY ANY OTHER PARTY.

16.5 ALL LIMITATIONS AND DISCLAIMERS STATED IN THIS PARAGRAPH 16 ALSO APPLY TO VERIZON'S THIRD PARTY LICENSORS, PROVIDERS AND SUPPLIERS, INCLUDING GSPS, AS THIRD PARTY BENEFICIARIES OF THIS

15. **LIMITATIONS ON USE OF THE SERVICE.**

- 15.1 You agree that your use of the Service and the Internet, without limitation, is your sole responsibility, is solely at your own risk, and is subject to all applicable local, state, national and international laws and regulations.
- 15.2 You agree that the Internet is not owned, operated or managed by, or in any way affiliated with Verizon and Verizon is not responsible and has no control over the information or materials accessible via the Internet through use of the Service. You further agree that Verizon does not own or control all of the various facilities and communications lines through which access may be provided, nor does Verizon guarantee access to or through websites, servers or other facilities on the Internet, whether or not such facilities are owned or controlled by Verizon. Verizon cannot and does not guarantee that the Service will provide Internet access that meets your needs.
- 15.3 You agree and acknowledge that through your use of the Service, you may have access to information, which may be sexually explicit, obscene or offensive, or otherwise unsuitable or objectionable, especially for children under the age of eighteen (18) years old. You agree to supervise usage of the Service by any minors who use your account to access the Service. Verizon is not responsible for access by any users, you, or minors, to objectionable or offensive information or data. VERIZON STRONGLY RECOMMENDS THE USE OF COMMERCIALLY AVAILABLE CONTENT FILTERING SOFTWARE.
- 15.4 You agree that Verizon cannot and does not guarantee or warrant that data available for downloading through the Service will be free of defects, infection or viruses, worms, Trojan horses or other code that manifest contaminating, malicious or destructive properties. You are responsible for implementing adequate procedures to satisfy your particular requirements for accuracy of data input and output and for maintaining a means external to the Service for the reconstruction of any lost data.
- 15.5 You agree that the Internet is not a secure network and that third parties may be able to intercept, access, use, or corrupt the information you transmit or receive over the Internet. Verizon is not responsible for invalid destinations, transmission errors, or corruption or security of your data.
- 15.6 You are not authorized to use any Verizon name or mark as a hypertext link to any Verizon Web site or in any advertising, publicity or in any other commercial manner without the prior written consent of Verizon Licensing Company. You understand that your ability to link to a Web site through the Service does not, in any way, represent or imply Verizon's approval of, or its determination of the quality of that product or service, and that links are provided for your convenience only. The links provided through the Service are maintained by their respective organizations, which are solely responsible for their content.

16. **WARRANTIES AND LIMITATION OF LIABILITY.**

- 16.1 YOU ACKNOWLEDGE AND AGREE THAT THE SERVICE SUPPLIED HEREUNDER IS PROVIDED ON AN "AS IS" OR "AS AVAILABLE" BASIS, WITH ALL FAULTS. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT AND AS OTHERWISE SPECIFICALLY SET FORTH IN ANY MANUFACTURER WARRANTY FOR ANY EQUIPMENT PROVIDED BY VERIZON (BUT ONLY IF SUCH WARRANTY IS

- 16.6 ANY RIGHTS OR LIMITS STATED HEREIN ARE THE MAXIMUM FOR WHICH VERIZON (AND ITS OFFICERS, EMPLOYEES, PARENT, SUBSIDIARIES, AND AFFILIATES), VERIZON'S THIRD PARTY LICENSORS, PROVIDERS AND SUPPLIERS, INCLUDING GSPS, ARE COLLECTIVELY RESPONSIBLE.
- 16.7 THE REMEDIES EXPRESSLY SET FORTH IN THIS AGREEMENT ARE YOUR SOLE AND EXCLUSIVE REMEDIES. YOU MAY HAVE ADDITIONAL RIGHTS UNDER CERTAIN LAWS (SUCH AS CONSUMER LAWS), WHICH DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY, OUR EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU.
- 16.8 VERIZON RESERVES THE RIGHT TO PURSUE ANY AND ALL LEGAL AND EQUITABLE CLAIMS AGAINST YOU PERTAINING TO YOUR USE OR MISUSE OF THE SERVICE OR FOR YOUR BREACH OF THE AGREEMENT (INCLUDING ANY POLICIES RELATING TO THE SERVICE.)
17. **INDEMNIFICATION.** You agree to defend, indemnify and hold harmless Verizon from and against all liabilities, costs and expenses, including reasonable attorney's fees, related to or arising from: (a) any violation of applicable laws, regulations or this Agreement by you (or any parties who use your account, with or without your permission, to access the Service); (b) the use of the Service or the Internet or the placement or transmission of any message, information, software or other materials on the Internet by you (or any parties who use your account, with or without your permission, to access the Service); (c) negligent acts, errors, or omissions by you (or any parties who use your account, with or without your permission, to access the Service); (d) injuries to or death of any person and for damages to or loss of any property, which may in any way arise out of or result from or in connection with this Agreement, except to the extent that such liabilities arise from the active negligence or willful misconduct of the other party; or (e) claims for infringement of any intellectual property rights arising from the use of the Service, Software, or the Internet.
18. **NOTICES.**
- 18.1 Notices required under this Agreement by you shall be provided to the Customer Service Department in accordance with the methods set forth under the Resource Center on the Website in the Contact Us Section. Notices by Verizon to you shall be deemed given: (a) when sent to your Verizon email address, or (b) when deposited in the United States mail addressed to you at last-known address or (c) when hand delivered to your home, as applicable. Notice of changes to this Agreement and these Terms of Service will be deemed given upon posting to the pages on the Website as set forth in Paragraph 6, Revisions, above.
- 18.2 With regard to electronic communications, you and Verizon further agree that: (a) the User ID and/or alias of a sender, contained in an electronic communication ("email"), is legally sufficient to verify the sender's identity and the authenticity of the communication; (b) an email sent containing your User ID and/or alias establishes you as its originator and has the same effect as a document with your written signature on it; and (c) an email or any computer printout of it, is a valid proof of the validity of the original content of the electronic communication.
19. **GENERAL PROVISIONS**
- 19.1 All obligations of the parties under this Agreement, which,

by their notice, would constitute a breach of the Agreement, cancellation or expiration of this Agreement, including by way of illustration and not limitation, those clauses relating to Software Licenses, Warranties and Limitation of Liability, and Indemnification, shall survive such termination, cancellation or expiration.

- 19.2 Verizon will not be liable for delays, damages or failures in performance due to causes beyond its reasonable control, including, but not limited to, acts of a governmental body, acts of God, acts of third parties, fires, floods, strikes or other labor-related disputes, of other things we do not control, or an inability to obtain necessary equipment or services.
- 19.3 You agree not to assign or otherwise transfer, this Agreement in whole or in part, including the Software or your rights or obligations under it. Any attempt to do so shall be void. We may assign all or any part of this Agreement without notice and you agree to make all subsequent payments as directed.
- 19.4 You and Verizon agree that the substantive laws of the Commonwealth of Virginia, without reference to its principles of conflicts of laws, will be applied to govern, construe and enforce all of the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement. YOU AND VERIZON CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION OF AND VENUE IN A COURT LOCATED IN FAIRFAX COUNTY, VIRGINIA FOR ANY SUITS OR CAUSES OF ACTION CONNECTED IN ANY WAY, DIRECTLY OR INDIRECTLY, TO THE SUBJECT MATTER OF THIS AGREEMENT OR TO THE SERVICE. Except as otherwise required by law, including Virginia laws relating to consumer transactions, any cause of action or claim you may have with respect to the Service must be commenced within one (1) year after the claim or cause of action arises or such claim or cause of action is barred.
- 19.5 Use, duplication or disclosure by any Government entity is subject to restrictions set forth, as applicable, in subparagraphs (a) through (d) of the Commercial Computer-Restricted Rights clause at FAR 52.227-19, FAR 12.212, DFARS 227.7202, or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause of DFARS 252.227-7013, and in similar clauses in the NASA FAR Supplement. Contractor/manufacturer is Verizon or its licensors and suppliers. The use of Software and documentation is further restricted in accordance with the terms of this Agreement.
- 19.6 In the event of a conflict between this Agreement and any applicable tariff, the tariff shall prevail. We reserve the right to modify the Service to reflect any change in any applicable tariff or underlying network service or component affecting the Service.
- 19.7 Verizon's failure at any time to insist upon strict compliance with any of the provisions of this Agreement in any instance shall not be construed to be a waiver of such terms in the future. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the unenforceable portion shall be construed as nearly as possible to reflect the original intentions of the parties.
- 19.8 This Agreement, including all Attachments and all other policies posted on the Website, which are fully incorporated into this Agreement either by attachment or by reference, constitutes the entire agreement between you and Verizon with respect to the subject matter hereto and supersedes any and all prior or contemporaneous agreements whether written or oral. Any changes by you to this Agreement, or any additional or different terms in your purchase orders, acknowledgements or other documents, written or electronic, are void.

bulletin board, or any other online service, or a similar disruptive effect, on (b) through the Service; (t) to use the Service to disrupt the normal flow of online dialogue, (u) to use the Service to violate any operating rule, policy or guideline of any other online services provider or interactive service; (v) to attempt to subvert or to aid third parties to subvert, the security of any computer facility or system connected to the Internet; (w) to impersonate any Verizon employee or official or other person or use a false name while using the Service or implying an association with Verizon; (x) to install "auto-responders," "cancel-bots" or similar automated or manual routines which generate excessive amounts of net traffic, or disrupt net user groups or email use by others; (y) to make false or unverified complaints against any Verizon subscriber, or otherwise abusing any of Verizon's complaint response procedures; (z) to use software or any other device that would allow your account to stay logged on while you are not actively using the Service, unless you are a Broadband customer; (aa) to export software or any information in violation of US export laws; (bb) to use the Service in contravention of the limitations of the pricing plan you have chosen; (cc) for Broadband customers who use static IP address, to use an IP address other than the one assigned by Verizon; (dd) for customer who have been assigned a dynamic IP address to use such IP address to circumvent the changing of IP addresses assigned by the Service or (ee) to open connections to more than one Verizon Usenet news service at a time.

Usenet Policy and Posting Restrictions: Usenet comprises a system of bulletin boards called newsgroups. Usenet access is provided to Internet access customers of Verizon through the Verizon network. Verizon Usenet may not be accessed via any other network. You may open no more than five simultaneous connections to newsgroups at any one time. You may not rapidly open and close or create connections for users other than yourself (our Subscriber). Verizon will carry newsgroups at their sole discretion. Requests to add a newsgroup, from any source, will be evaluated on a case-by-case basis, and added at Verizon's sole discretion. You must familiarize yourself with the subjects and established guidelines and restrictions of any newsgroup in which you participate and we reserve the right, in our sole discretion, to terminate your Service in the event you violate newsgroup guidelines or restrictions.

4. **Copyright Infringement/Repeat Infringer Policy.** Verizon respects the intellectual property rights of third parties, including those granted under the US copyright laws, and the interests of its subscribers and content providers on the Internet. You may not store material of any type or in any format on, or disseminate such material over, Verizon's systems or servers in any manner that constitutes an infringement of third party intellectual property rights, including rights granted under the US copyright laws. In accordance with the Digital Millennium Copyright Act (DMCA) and other applicable law, it is the policy of Verizon to terminate, in appropriate circumstances, the Service provided to any subscriber or account holder who is deemed to infringe third party intellectual property rights, including repeat infringers. Appropriate circumstances may exist where (i) a Subscriber or account holder has been found by a court of competent jurisdiction to have infringed the copyrights of a third party on two or more occasions, i.e., a repeat infringer, (ii) Subscriber or account holder has entered into an agreement acknowledging wrongdoing to settle a claim of copyright infringement and subsequently uses Verizon's service to violate the terms of that agreement by engaging in copyright infringement or to otherwise engage in conduct that is found by a court of competent jurisdiction to constitute copyright infringement, (iii) where a valid, effective and uncontested notice has been provided to Verizon alleging facts which are a violation by the Subscriber

ATTACHMENT A

ACCEPTABLE USE POLICY

1. This is Verizon's policy on the acceptable use of the Service. It is designed to help protect the Service, Verizon's customers and the Internet community, from irresponsible or illegal activities.
2. Verizon reserves the right to deny Service to you, or immediately to terminate your Service for material breach, if your use of the Service or your use of an alias or the aliases of additional users on your account, whether explicitly or implicitly, and in the sole discretion of Verizon: (a) is obscene, indecent, pornographic, sadistic, cruel or racist in nature, or of a sexually explicit or graphic nature; (b) espouses, promotes or incites bigotry, hatred or racism; (c) might be legally actionable for any reason, (d) is objectionable for any reason, or (e) in any manner violates the terms of this Acceptable Use Policy.
3. You may NOT use the Service as follows: (a) for any unlawful, improper or illegal purpose or activity; (b) to post or transmit information or communications that, whether explicitly stated, implied, or suggested through use of symbols, are obscene, indecent, pornographic, sadistic, cruel, or racist in content, or of a sexually explicit or graphic nature; or which espouses, promotes or incites bigotry, hatred or racism; or which might be legally actionable for any reason; (c) to access or attempt to access the accounts of others, to spoof or attempt to spoof the URL or DNS or IP addresses of Verizon or any other entity, or to attempt to penetrate or penetrate security measures of Verizon or other entities' systems ("hacking") whether or not the intrusion results in corruption or loss of data; (d) to bombard individuals or newsgroups with uninvited communications, data or information, or other similar activities, including but not limited to "spamming", "flaming" or denial or distributed denial of service attacks; (e) to transmit unsolicited voluminous emails (for example, spamming) or to intercept, interfere with or redirect email intended for third parties using the Service; (f) to introduce viruses, worms, harmful code and/or Trojan horses on the Internet; (g) to post information on newsgroups which is not in the topic area or charter (e.g. off-topic posting) of the newsgroup; (h) to interfere with another person's usage or enjoyment of the Internet or this Service; (i) to post or transmit information or communications that are defamatory, fraudulent, obscene or deceptive, including but not limited to scams such as "make-money-fast" schemes or "pyramid/chain" letters; (j) to damage the name or reputation of Verizon, its parent, affiliates and subsidiaries, or any third parties; (k) to transmit confidential or proprietary information, except solely at your own risk; (l) to violate Verizon's or any third party's copyright, trademark, proprietary or other intellectual property rights, including trade secret rights; (m) to use more than one IP address obtained from Verizon; (n) to generate excessive amounts (as determined by Verizon in its sole discretion) of Internet traffic, or to disrupt net user groups or email use by others; (o) to engage in activities designed to or having the effect of degrading or denying Service to Verizon users or others (including activities that compromise a server, router, circuit, software or other Internet component); (p) to use any name or mark of Verizon, its parent, affiliates or subsidiaries, as a hypertext link to any Web site or in any advertising publicity or other commercial manner; (q) to use the Service to operate a server in a manner that interferes with the network or other users' use of the Service; (r) to use the Service or the Internet in a manner intended to threaten, harass, intimidate; (s) to cause the screen to "scroll" faster than other subscribers or users are
5. You shall comply with all applicable local, state, national and international laws and regulations, including those related to data privacy, international communications, and exportation or technical or personal data. You represent that you are not a specifically designated individual or entity under any US embargo or otherwise the subject, either directly or indirectly (by affiliation, or any other connection with another party) to any order issued by any agency of the US Government limiting, barring, revoking or denying, in whole or in part your US export privileges. You agree to notify Verizon if you become subject to any such order.
6. You shall not delete any proprietary designations, legal notices or other identifiers belonging to third parties from any information obtained or sent using the Service and shall not impersonate any person or use a false name while using the Service. You agree to obtain all required permissions if you use the Service to receive, upload, download, display, distribute, or execute Software or perform other works protected by intellectual property laws including copyright, trademark, trade secret and patent laws. You agree to cooperate with Verizon and provide requested information in connection with all security and use matters. You agree to notify Verizon promptly if you suspect unauthorized use of the Service or of your UserID. You remain liable for unauthorized use until your notification to Verizon at security@verizon.net. You agree that your name, UserID, and other identifying information may be placed in our user directory.
7. Verizon reserves the right to cooperate with legal authorities and/or injured third parties in the investigation of any suspected crime or civil wrong. Such cooperation may include, but not be limited to, provision of account or user information or email as well as monitoring of the Verizon network.
8. Verizon may, but is not required to, monitor your compliance, or the compliance of other subscribers, with the terms, conditions or policies of this Agreement.

V-E5.21

Exhibit A

Services in New Jersey provided by Verizon Online—New Jersey LLC.

Services in Maryland provided by Verizon Online — Maryland LLC.

Services in Pennsylvania are provided by Verizon Online Pennsylvania Partnership.